

# Exhibit 8

Office of  
The City Attorney  
City of San Diego

MEMORANDUM  
MS 59

(619) 236-6220

**DATE:** May 6, 2008  
**TO:** Budget Review Committee Chair, Toni Atkins  
**FROM:** City Attorney  
**SUBJECT:** Discussion of Family Justice Center Budget at the May 7, 2008 Budget Review Committee Meeting

---

The agenda for the May 7, 2008, Budget Review Committee of the City Council states:

Item -1: FY 2009 BUDGET HEARING PUBLIC SAFETY AND HOMELAND SECURITY, SDCERS, BUSINESS SERVICES, ETHICS COMMISSION, CITY COUNCIL

Under that heading, one of the departments to be discussed is the Family Justice Center [FJC]. Although there are no back-up materials linked on-line, the Mayor's on-line Fiscal Year 2009 Proposed Budget contains the FJC budget and a proposal to add additional staffing at the FJC. However, we recently learned that the Mayor may be presenting a revised budget for the FJC. On May 1, 2008, the Mayor sent a memorandum to the City Council entitled "Proposed Revision to the Recommended Fiscal Year 2009 Budget and the Recommended Transition of the Management of the City's Family Justice Center to the YWCA."

We are concerned that the Mayor's revision and related information has not been adequately described in the agenda so that interested persons would have notice of the discussion and an opportunity to be heard. The Brown Act requires that the agenda contain a brief general description of each item of business to be transacted or discussed at the meeting. Cal. Gov't Code § 54954.2. The description in the above-described agenda is inadequate to put the public on notice of the potential contracting out of the FJC department and its eventual abolishment. Accordingly, we recommend that this matter be properly noticed for another meeting to enable the public participation contemplated by the Brown Act.

MICHAEL J. AGUIRRE, City Attorney

By

Michael J. Aguirre  
City Attorney

MJA:jb

cc: Mayor and City Councilmembers  
Elizabeth Maland, City Clerk

**THE BUDGET REVIEW COMMITTEE  
OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO**

**AGENDA FOR  
WEDNESDAY, MAY 7, 2008, AT 9:00 A.M.**

**COUNCIL CHAMBERS (12TH FLOOR),  
CITY ADMINISTRATION BUILDING  
202 C STREET, SAN DIEGO, CALIFORNIA**

For information, contact Dale Kelly Bankhead, Council Committee Consultant  
202 C Street, 3rd Floor, San Diego, CA 92101  
Email: [Dbankhead@sanidiego.gov](mailto:Dbankhead@sanidiego.gov)  
619-236-6166

---

NON-AGENDA PUBLIC COMMENT

COMMITTEE COMMENT

CITY ATTORNEY, IBA, AND MAYORAL STAFF COMMENT

ADOPTION AGENDA

Approval of the Record of Action Items for April 30, May 1, and May 2, 2008

ITEM-1: FY 2009 BUDGET HEARING: PUBLIC SAFETY AND HOMELAND  
SECURITY, SDCERS, BUSINESS SERVICES, ETHICS COMMISSION, CITY  
COUNCIL

9:00 a.m. – 12:00 noon    Fire Rescue  
   Emergency Medical Services (EMS)  
   San Diego Medical Services Enterprise (SDMSE)  
   Homeland Security  
   Gang Commission  
   Police  
   Family Justice Center

2:00 p.m. – 5:30 p.m.    Business Administration  
   Business Office  
   San Diego City Employees Retirement System  
   (SDCERS) Administration

Ethics Commission

**AGENDA**  
**Budget Review Committee**  
**May 7, 2008**  
**- 2 -**

---

City Council  
Council Administration

***Please note:** On any given day, morning items may be continued to the afternoon session and afternoon items may be continued until another day if necessitated by time constraints.*

Toni Atkins  
Chair

THE COMMITTEE ON BUDGET AND FINANCE  
OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO

ACTIONS FOR  
WEDNESDAY, MAY 7, 2008, AT 9:00 A.M.

COUNCIL CHAMBERS (12TH FLOOR),  
CITY ADMINISTRATION BUILDING  
202 C STREET, SAN DIEGO, CALIFORNIA

For information, contact Dale Kelly Bankhead, Council Committee Consultant  
202 C Street, 3rd Floor, San Diego, CA 92101  
Email: [Dbankhead@sandiego.gov](mailto:Dbankhead@sandiego.gov)  
619-236-6166

---

NON-AGENDA PUBLIC COMMENT: None.

COMMITTEE COMMENT: None.

CITY ATTORNEY, IBA, AND MAYORAL STAFF COMMENT: None.

ITEM-1: FY 2009 BUDGET HEARING: PUBLIC SAFETY AND HOMELAND  
SECURITY, SDCERS, BUSINESS SERVICES, ETHICS COMMISSION, CITY  
COUNCIL

9:00 a.m. – 12:00 noon    Fire Rescue  
   Emergency Medical Services (EMS)  
   San Diego Medical Services Enterprise (SDMSE)  
   Homeland Security  
   Gang Commission  
   Police  
   Family Justice Center

2:00 p.m. – 5:30 p.m.    Business Administration  
   Business Office  
   San Diego City Employees Retirement System  
   (SDCERS) Administration

Ethics Commission

ACTIONS  
Budget and Finance Committee  
May 7, 2008  
- 2 -

---

City Council  
Council Administration

ACTION:      Hearing held.

*Please note: On any given day, morning items may be continued to the afternoon session and afternoon items may be continued until another day if necessitated by time constraints.*

Toni Atkins  
Chair

# Exhibit 9

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620  
SAN DIEGO, CALIFORNIA 92101-4178  
TELEPHONE (619) 236-6220  
FAX (619) 236-7215

**Michael J. Aguirre**  
CITY ATTORNEY

May 6, 2008

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

PROPOSAL TO TRANSFER SAN DIEGO FAMILY JUSTICE CENTER TO THE YWCA

### **INTRODUCTION**

The San Diego Family Justice Center [FJC] was originally created by an informal partnership in 1998 between Casey Gwinn, the former City Attorney, and David Bejarano, the former San Diego Police Chief. What made the FJC unique was the entire prosecution arm and the law enforcement arm of domestic violence and child abuse were co-located under one roof to assist victims of domestic violence and their children. At that time, the FJC functioned as part of the City Attorney's Office. In 2004, the FJC became a City Department under the City Manager. The management of the FJC should never have been moved from the City Attorney's Office. The Council now has an opportunity to move the FJC back to the City Attorney's Office where it would function best.

In a March 27, 2008 letter, the San Diego County Young Women's Christian Association [YWCA], under the leadership of Executive Director Casey Gwinn, proposed taking over the management of the FJC Department as of July 1, 2008, and ultimately eliminating the FJC Department altogether. The City Attorney's Office was not involved in any of the planning for this proposal. On May 1, 2008, the Mayor issued a memorandum supporting and recommending the adoption of this proposal. The City Attorney's Office received a copy on May 2, 2008 from Casey Gwinn.

Neither the City Attorney's Office, nor the FJC Steering Committee, were consulted in the preparation of the YWCA proposal or its recommended adoption by the Mayor. This proposal did not go through the proper public process. Such actions are improper and inappropriate as they violate SDMC section 22.2203, numerous ordinances governing procurement, state labor laws governing meet and confer obligations, and City Charter provisions governing managed competition. Further the proposal raises substantial and serious concerns relating to the Establishment Clauses of the Federal and State Constitutions.

### **BACKGROUND**

#### **I. Early History of the San Diego Family Justice Center**



After several years of informal coordination between Casey Gwinn, the former City Attorney, and the former Police Chief, on October 10, 2002, the FJC formally opened at 707 Broadway with the assistance of over 24 community partners, creating the most comprehensive facility of its kind in America, and providing services to victims of domestic violence and their children. When the FJC opened, each day over 120 child abuse and domestic violence professionals and volunteers provided services to victims of family violence and sexual assault at the Family Justice Center. In addition, each month the FJC provided services to 600-800 women, men and children.

In October 2003, President George W. Bush announced the President's Family Justice Center Initiative to create family justice centers across America modeled after the San Diego Family Justice Center. Over the next two years, the United States Department of Justice began to fund 15 sites with approximately \$20 million authorized by the national initiative.

In a report dated April 15, 2004, former City Attorney Casey Gwinn recommended expanding the lease to add 12,000 square feet of space on the 2<sup>nd</sup> floor of 707 Broadway to allow for the addition of other community partner organizations. The lease was eventually approved by the City Council in 2004. This expansion created enough space to allow the San Diego Family Justice Center Foundation, of which Casey Gwinn was the founder and board member, to move into the FJC at 707 Broadway.

## **II. Casey Gwinn's Efforts to Maintain Control of the FJC After Leaving Office**

Two years after the founding of the FJC, in a report dated November 2, 2004, Mr. Gwinn proposed that the Mayor and Council establish the FJC as a department under the authority of the City Manager. The new Department would be overseen by a Director that reported directly to the City Manager. There would be no increases in the City budget because the positions would be cut and transferred from the City Attorney's Office budget to the FJC. Among the reasons for the creation of the new department, Mr. Gwinn's report cited concerns that the FJC should continue operating in the same manner "irrespective of the individual priorities of a future Police Chief, Fire Chief, City Attorney, or City Manager." Thus, Mr. Gwinn expressly stated that his intent was to isolate control of the FJC from, among others, the incoming City Attorney.

On November 15, 2004, four days before the city clerk certified the election of the current City Attorney, the Mayor and City Council passed an ordinance establishing a Family Justice Center Department under the San Diego City Manager (Lamont Ewell) to oversee the administration of the Family Justice Center.

In supporting Gwinn's proposal, the Mayor and City Council approved the transfer of three critical positions from the Domestic Violence Unit of the City Attorney's Office to the City Manager's Office (director/assistant city attorney, administrative assistant/city attorney legal secretary, and a grants analyst/city attorney grants analyst) and one position from the Police

Department (operations manager/police manager) before the newly elected City Attorney was sworn into office on December 6, 2004.

The ordinance was adopted on November 29, 2004, which prevented the newly elected City Attorney from reviewing the ordinance and evaluating the needs of the Domestic Violence Unit of the City Attorney's Office. The ordinance also created the FJC Steering Committee. This Committee consists of the Director of the FJC, the City Attorney, the Chief of Police, the San Diego District Attorney, and the current Chair of the Public Safety and Neighborhood Services Committee of the City Council.

The FJC Steering Committee were to meet periodically, but no less than once a quarter to develop and oversee the operational guidelines for the FJC, and to make recommendations to the Mayor and the City Council for development of a Long Range Strategic Plan for development of the FJC, and to make recommendations pertaining to programs, priorities, and the annual budget for the FJC. SDMC § 22.2203.

The City Attorney Report (November 2, 2004) accompanying the ordinance stated that "Other City Attorney's Office classified personnel including victim advocates, and support staff currently assigned to the Family Justice Center could be transferred to the Family Justice Center department in a process to be identified by the City Manager and in consultation with the City Attorney."

Three months later, a working group was tasked to evaluate two new governance approaches, other than being a City Department: (1) a public benefit corporation administered through a community-based governance board, or (2) a joint powers authority between the City of San Diego and the County of San Diego. Thus, unlike the current proposal, a prior proposal to restructure the FJC was discussed through, an open, public process. Ultimately, the 2005 proposals were not adopted. See, Manager's Report dated March 10, 2005.

Originally, Casey Gwinn planned to work part-time for the District Attorney and part-time for the San Diego Family Justice Center Foundation, as reported in a February 25, 2004 Union Tribune article. Subsequently, questions were raised about potential conflicts of interest violations as noted in a later Union Tribune article dated September, 24 2004. The Ethics Commission declined to rule on the state law questions. Ultimately, Casey Gwinn did not work part-time for the Foundation.

Additionally, it is important to note that Casey Gwinn was found to be negligent in the fulfillment of his duties as the City Attorney with regard to financial disclosures. See, Kroll Report, p. 238. Further, the Kroll Report questioned Casey Gwinn's billing practices as City Attorney. See, Kroll Report, appendix Q. The conclusions of the Kroll Report call into question of the wisdom of turning over a City department, once again, to Casey Gwinn.

### **III. The YWCA Proposal**

As the elected City Attorney, Casey Gwinn founded the San Diego Family Justice Center Foundation in July 2003. After leaving the City Attorney's Office, Mr. Gwinn went to work part-time for the San Diego District Attorney's Office and worked on domestic violence issues.

On July 1, 2007 Mr. Gwinn was hired as the Executive Director of the YWCA. He has been actively pursuing the proposal for the YWCA to take over the FJC from the City.

In a letter to Mayor Sanders dated March 27, 2008, the YWCA under Mr. Gwinn's leadership proposed moving the FJC to the YWCA Main Building by March 2010, eliminating the FJC Department, and moving towards the community-based leadership model envisioned in the Regional Family Justice Center Network Plan, as proposed by the District Attorney's Office in June of 2007. Under the proposal, the City would enter into a 10-year lease to house the FJC at the YWCA a cost of approximately \$900,000 each year. This lease would not include space for the City's 11 domestic violence prosecutors and 15 staff that currently occupy one floor of the FJC. However, the lease would include space for the San Diego Police Department's Domestic Violence and Elder Abuse Units.

Until the move to the YWCA Main Building, the YWCA proposes it enter into a management agreement with the City (effective July 1, 2008) for \$125,000 each year. During this two year agreement, the YWCA would oversee and coordinate the work of the FJC with the partner agencies, thereby essentially taking over the function of an existing City Department. An additional use of this City-leased property would be that YWCA clients would also use the FJC for services that would otherwise be provided at the YWCA. This arrangement would permit the YWCA to have a home for its services, during renovation, without having to pay rent. The YWCA claims that this model will save the City more than \$300,000 per year and allow a two year transition process for the relocation of the FJC to the YWCA Main Building.

Mayor Sanders has been in discussion with the YWCA on the proposal for the last six months, without consultation with the FJC Steering Committee, as required by ordinance, and without consultation by the two largest community partners of the FJC, the City Attorney's Office and the San Diego Police Department. The Mayor in a May 1, 2008 memo recommends accepting this proposal by the YWCA, while proposing a limited presence by the City Attorney's Office in the new facility.

## **DISCUSSION**

### **I. Public Policy Concerns**

#### **A. Lack of Transparency**

That this proposal was created and discussed is disturbing at the least, and contrary to law at the worst. The FJC Steering Committee was neither informed nor consulted about this proposal, as required by SDMC section 22.2203. At no time was the March 27, 2008 proposal

for the YWCA to take over leadership and management of the FJC ever presented or discussed to the FJC Steering Committee. Instead this proposal was developed by the YWCA in consultation with the District Attorney's Office, and then embraced by the Mayor's Office – all outside of the eyes of the public. The FJC Steering Committee was set to meet on April 30, 2008, which meeting was canceled on April 29, 2008 without a stated reason.

**B. Contrary to Purpose of the FJC**

The purpose of the SDFJC was to create a "one stop shop" for victims of domestic violence and their children, where they could meet with law enforcement officials to report the abuse, who would in turn would work closely with the deputy city attorneys that prosecute these crimes. Having both law enforcement and the prosecutors under one roof is what makes the SDFJC unique from all other social providers who assist victims of crime. In addition to law enforcement and prosecution, victims are also able to meet with social service providers to receive assistance in obtaining a restraining order against their abuser, to receive medical assistance for themselves and their children, to receive special services provided for military families, to receive therapy for themselves and their children from Children's Hospital, to receive special services based on a victim's particular need, such as elderly victims, from Adult Protective Services to name a few.

The YWCA proposal, however, would eliminate this primary innovation. It would provide for, at most, woefully inadequate space for domestic violence prosecutors. It "does not anticipate a large presence from the City Attorney's Office." Thus, the alleged purpose of maintaining the integrated provision of services would be lost.

**C. No Clear Savings to Citizens of San Diego**

The YWCA's claim of savings does not take into account the fact that the transfer of the FJC to the YWCA will require the City to lease new space to house the domestic violence prosecutors and support staff who will be displaced. Currently the FJC houses at least 26 City Attorney employees on the 5th floor of the FJC. The cost of relocating these employees, including rent for approximately 9,000 square feet of office space at a future facility, needs to be subtracted from the claimed cost savings.

In addition, it appears from the Regional Family Justice Center Network Plan, as proposed by the District Attorney's Office in June of 2007, that the eventual intent of the YWCA and the County is that the County should eventually run the downtown FJC, although the City would still be funding the operation through a combined lease/management contract in the amount of \$900,000 annually. There is no clear explanation as to why the City would continue to pay for space for a City department that will no longer exist. Nor is there any analysis of whether other space might be available at a more competitive price, or even through grant funding or donations that might result in little or no cost to the City.

## II. Legal Issues Relating to the Proposed Management Agreement

### A. The Proposed Agreement Conflicts with the City Charter

The proposal by the YWCA is at best vague in its terms. However it plainly envisions a transfer of supervision of a City Department to a non-profit organization. This raises many legal considerations, foremost among them is the fact that such transfer conflicts with provisions of the City Charter and would be void.

The Family Justice Center was created as a City Department by San Diego Municipal Code section 22.2201. As with other City Departments, the Mayor now appoints the Department Director. SDMC § 22.2202; San Diego Charter § 29. The City Council by a two-thirds vote could abolish this Department. San Diego Charter § 26. However, the Charter does not give either the Mayor or the City Council the authority to transfer supervision of this City Department to a private body.

The Mayor has authority to outsource the services of City Departments to private contractors pursuant to Charter section 117(c) and its implementing ordinances. However this is the *exclusive* method for such outsourcing of City services. To the extent this proposal involves the outsourcing of city services to a non profit corporation it does not seem to comply with the requirements of section 117(c). Accordingly, incorporating this budgetary suggestion into the appropriations ordinance would make the ordinance conflict with Charter section 117(c). Such an ordinance or agreement that conflicts with a City Charter provision would be void. *Domar Electric, Inc. v. City of Los Angeles*, 9 Cal.4th 161, 171 (1994); *Hubbard v. City of San Diego*, 55 Cal.App.3d 380, 387-388 (1976).

Charter section 11.1 limits the City Council from delegating its authority to a private person in the same manner California Constitution Article XI, Section 11a limits the state legislature. Article XI, Section 11a provides that "The Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions." To the extent that the Council agrees that a private party supervise a City Department funded with public moneys, it may be violating those provisions. Such an unconstitutional delegation of power may occur when a legislative body provides an administrative *agency* with unrestricted authority to make fundamental policy decisions. See *discussion, Hess Collection Winery v. California Agricultural Labor Relations Board*, 140 Cal.App.4th 1584, 1604-1605 (2006). Delegating unlimited authority to a private institution that is not even an administrative agency may well be a violation of this constitutional and charter provision.

Moreover, the Charter provides that it is the Mayor's duty as City Manager to supervise the administration of the affairs of the city, including City Departments. Charter §§ 28, 29. Section 28 gives the Mayor the responsibility to assume the duties of department heads. It does

not give him the authority to delegate his administrative supervisory powers, or those of one of his Department heads, to a private party. The Mayor is the public official given the discretion by the City Charter to supervise City Departments in accordance with City policies established by the City Council. A City Council "cannot relieve a charter officer of the city from the duties devolving upon him by the charter." *Dadmun v. City of San Diego*, 9 Cal.App. 549, 551 (1908). Any action that would transfer supervision of a City Department from the Mayor to a private company would be unauthorized and void. *Ibid*; also *Hubbard*, 55 Cal.App.3d at 387-388.

**B. Requirement to Meet and Confer with Recognized Labor Unions**

The Family Justice Center (FJC) proposal of the Mayor as reflected in his May 1, 2008 memorandum states at paragraph 3: "The first part of the proposal calls for the YWCA to assume responsibility for the management of the FJC effective July 1, 2008." He proposes to eliminate the current City staff at the FJC and contract with the YWCA to manage it, claiming a labor cost savings in using YWCA staff instead of City staff. There are currently five full time City positions at the FJC that are represented by a collective bargaining unit, the Municipal Employees Association.

The proposal of the Mayor, if enacted at this time, would violate Government Code sections 3500 et.seq. commonly referred to as the Meyers-Milias Brown Act. Section 3505 of the Act requires the City to meet and confer with its bargaining units over wages, hours, and working conditions. A proposal by a public agency to contract out the work of its bargaining unit employees is a mandatory subject of bargaining. *Lucia Mar Unified School District* (2001) PERB Decision No. 1440.

The City can not contract out the work of the MEA bargaining unit members in the FJC or eliminate their positions, without first negotiating with MEA. *Building Material and Construction Teamsters Union, Local 216 v. Farrell, as Controller* (1986) 41 Cal.3d. 651. The negotiations must involve both the decision to contract out work, and the impact of the decision on any affected bargaining unit employees. MEA is permitted to offer alternative proposals, including, but not limited to, the City not contracting out the work of its bargaining unit members. *Rialto Police Benefit Association v. City Rialto* (2007) 155 Cal.App.4<sup>th</sup> 1295, Fourth Appellate District. (City's decision to contract with the county sheriff for law enforcement services rather than continue to provide those services through its own police department required the city to negotiate the decision and effects with its police union. Decision by city to contract out the service set aside.)

The City must go through the same negotiation process with MEA over this issue as it does over any other negotiable issue. That is, (a) reasonable notification must be given MEA of the proposal to contract out work and eliminate the positions, (b) negotiation with MEA over the proposal itself to contract out work as well as the effects of the proposal, (c) reach agreement with MEA or, if impasse is reached, follow the City's impasse procedures by holding an impasse meeting, and subsequently an impasse hearing before the City Council. During the process, the

City must provide with information sufficient for it to intelligently negotiate. No vote can take place on the Mayor's proposal to contract out this work and eliminate these positions, until the negotiation process, and if necessary, the impasse process, is complete.

Contracting out work without allowing the affected labor union to bargain over both the proposed decision and its effects is an unfair labor practice, not tolerated by the Public Employment Relations Board. Voting on the Mayor's proposal, before the completion of the negotiation process would likewise show the Council had prematurely made a decision prior to required input by MEA and possible alteration of the Mayor's proposal in negotiations. *Oxnard Harbor District* (2004) PERB Decision No. 1580-M; *Riverside County* (2003) PERB Decision No. 1577-M. This too would be an unfair labor practice.

The remedy for the City imposing this proposal prior to the completion of negotiations would be to return to the status quo ante, i.e., reinstating all the city employees released, with full back pay and benefits from the date they were let go, reinstating the City run program with city staff managing it, and returning to the negotiation table to do what should have been done initially, negotiate with MEA over the proposal. *Oakland Unified School District* (2005) PERB Decision No. 1770 (Refusal to negotiate contracting out police coverage of schools to City of Oakland and layoff of school police officers. School district ordered to reinstate school police officers with back pay and benefits, despite district paying Oakland \$1,000,000 per year to patrol the agency's schools.)

The City would be required to do this, despite having spent City funds each year in paying the YWCA to perform these services. In essence, the City would be required to pay twice, once to the YWCA and again to reinstate all the employees that were previously performing those functions, with full back pay and benefits.

At the present time, matters of family violence which may be misdemeanors are referred to the City Attorney's office, which provides staff as a part of the FCJ. Those employees are bargaining unit employees of the MEA and DCCA unions. If the Mayor's proposal would affect the assignment of work currently handled by bargaining unit employees of the City Attorney's office, by reducing or eliminating the work currently performed by these bargaining unit employees, it would again be a violation of the City's duty under Government Code section 3505 to fail to negotiate the transfer of work out of the bargaining units, prior to implementing such action.

If the proposal shifts work currently handled by the City Attorney's office to the District Attorney's office, this would be contracting out of work, and a shift in work out of the current bargaining units, and could not occur without a violation under the Meyers-Milias Brown Act until and unless negotiations were held with the respective unions, and an agreement was reached, or impasse procedures (including a vote by the City Council), completed.

**C. Contracting with a Faith Based Organization to Perform City Services**

The Young Women's Christian Association [YWCA] mission is "nourished by its roots in the Christian faith...."<sup>1</sup> Because the organization is faith-based, potential issues regarding the Establishment Clause must be resolved before the YWCA could be authorized to manage the Family Justice Center.

## **I. U.S. Establishment Clause**

The First Amendment of the United States Constitution states in part that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...."<sup>2</sup> This portion of the First Amendment has commonly been referred to as the "Establishment Clause." While the Supreme Court has noted that "[t]he language of the Religion Clauses of the First Amendment is at best opaque,"<sup>3</sup> the analysis has been distilled to three cumulative tests, based on the three main evils the Establishment Clause was intended to provide protection from: "sponsorship, financial support, and active involvement of the sovereign in religious activity."<sup>4</sup>

The three tests are: 1) the statute must have a secular purpose, 2) its principal or primary effect must be one that neither advances nor inhibits religion, and 3) the statute must not foster an excessive government entanglement with religion.<sup>5</sup> In *Lemon*, the Supreme Court held that two separate state programs violated the Establishment Clause. The State of Rhode Island provided salary supplements to teachers of secular subjects in non-public schools and the State of Pennsylvania provided for reimbursement to non-public schools for teachers' salaries, textbooks, and instructional materials. The large majority of students in both states who attended non-public schools attended parochial schools affiliated with the Roman Catholic Church.

The court found that the "cumulative impact of the entire relationship arising under the statutes in each State involves excessive entanglement between government and religion."<sup>6</sup> In order to make this determination, the court examined "the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority."<sup>7</sup> The court warned against "programs," "whose very nature is to entangle the state in details of administration."<sup>8</sup>

---

<sup>1</sup> [www.ywca.org](http://www.ywca.org) visited 5/5/2008.

<sup>2</sup> US Constitution, 1<sup>st</sup> Amendment.

<sup>3</sup> *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971)

<sup>4</sup> *Id.*, citing *Walz v. Tax Commission*, 397 U.S. 664, 668; 90 S.Ct. 1409, 1411; 25 L.Ed. 697 (1970).

<sup>5</sup> *Lemon*, 612-613.

<sup>6</sup> *Lemon*, 613.

<sup>7</sup> *Lemon*, 615.

<sup>8</sup> *Lemon*, 615; citing Justice Harlan's concurring opinion in *Walz v. Tax Commission*, 397 U.S. 664, 668; 90 S.Ct. 1409, 1411; 25 L.Ed. 697 (1970).



In the particular facts presented in the *Lemon* case, the court noted the physical proximity of the schools to the churches, the religious symbols present, the integration of the schools to the religious mission of the Catholic Church, and in the case of Pennsylvania, the direct financial aid to the schools. Although the court did not make any findings that religious values inevitably or necessarily intruded into the content of the secular subjects, the need by the government for careful controls and surveillance itself was "excessive and enduring entanglement between state and church."<sup>9</sup>

Later, in *Larkin*, the Supreme Court applied the third *Lemon* test to invalidate a Massachusetts statute that allowed churches and schools to veto liquor license granted to any establishment within 500 feet of the church or school.<sup>10</sup> The Court held that even this minimal governmental authority violated the establishment clause.

## **2. State of California Constitutional Concerns**

The Constitution of the State of California addresses the relationship between the state and religion in several places:

Article I, section 4: The free exercise of religion and enjoyment of religion without discrimination or preference are guaranteed. The Legislature is prohibited from making a law respecting the establishment of religion.

Article XVI, section 5: "Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever...." However, aid granted pursuant to Article XVI, section 3 is allowed.<sup>11</sup>

Article IX, section 8: Prohibits the appropriation of public money for any sectarian or denominational school not under the exclusive control of the officers of the public schools.

California courts have interpreted Article I, section 4 as being more protective of the principle of separation of church and state than the federal guarantee.<sup>12</sup>

There has been no proposal submitted regarding the management of the FJC by the YWCA, such that the concerns regarding the Establishment Clause, particularly "excessive

---

<sup>9</sup> *Lemon*, 619.

<sup>10</sup> *Larkin v. Grendel's Den*, 459 U.S. 116 (1982).

<sup>11</sup> Ca. Const. Art. XVI, §3 allows support for hospital, orphans, children of disabled, aged, blind, needy, and physically handicapped persons.

<sup>12</sup> *Fox v. City of Los Angeles*, 22 Cal.3d 792 (1978).

entanglement", could be reviewed. A management proposal should be submitted for review for determination as to whether the concerns expressed by the courts could be addressed.

**D. Compliance with the City's Contracting Policies**

The proposal also raises significant legal questions regarding the method by which the contractual relationship between the City and the YWCA has been negotiated. Contracts for City services must be procured through a competitive process governed by Chapter 2, Article 2, Division 32 of the San Diego Municipal Code. Under the provisions of Division 32 and related sections of the Municipal Code, services must be procured on a competitive basis unless an exception to this requirement applies. SDMC §§22.3202; 22.3211. It is not at all clear that, in view of the entirety of the proposal, any exception applies. While section 22.3222 permits special treatment of contracts with non-profit organizations, this exception only applies where the contract will not exceed \$500,000 per year. It appears that this requirement would only be met in the first year of the proposed relationship between the City and the YWCA, when the only cost to the City would be a management fee of \$125,000. In all subsequent years, the management fee would be combined with a rent obligation at the YMCA's own facility, which would be renovated. The total obligation of the City, then, for both rent and management costs, would be \$900,000. Thus, it appears that this exception to competitive bidding would not be applicable beyond the first year of a proposed long-term arrangement.

While it might be suggested that breaking out the contract for the first year from those for subsequent years would allow the City to enter into the FY 2009 contract under SDMC section 22.3222 while searching for a separate justification for later years, this is specifically forbidden by SDMC section 22.3204. Likewise, it might be suggested that the dollar limit of SDMC section 22.3222 could be circumvented by separating the lease and management aspects of the proposal, since leases are not subject to Division 32 and the management fee, taken alone, is less than \$500,000. However, since it is apparent that the management and lease aspects of the proposal are intended to be integrated, we doubt that this would be permissible under section 22.3204, if the purpose were to avoid the limitation of SDMC section 22.3222.

Although City contracts are commonly entered on a "sole source" basis under sections 22.3037 and 22.3212(e) (where competitive procurement would be "unavailing, or would not produce an advantage, or would be undesirable, impractical, or impossible," we are not aware of any legitimate sole source justification in this case. To the contrary, it appears that City staff has been actively engaged in discussions with YWCA officials for at least six months. During that time, if the City staff believed that operation of the FJC could be more effectively managed in the private sector, it presumably could have developed a Request for Proposals and invited various organizations to compete for the right to serve. We have seen no explanation for why this was not done.

Finally, we note that the proposed lease of future renovated YWCA space would be for ten years. If the proposal as we understand it goes forward, the YWCA's management contract

would be inextricably intertwined with that lease, and thus would effectively be a ten year agreement even if it were nominally to contain a lesser term. Thus, we advise that, to the extent that the other issues addressed herein may be surmountable, City Council approval of all aspects of the proposed agreement be by Ordinance in compliance with section 99 of the City Charter, which imposes special noticing requirements and also required a two-thirds vote of the Council.

**E. Contracts with Service Providers**

It is unclear whether the YWCA will be contracting directly with the service providers that currently have agreements with the City. If it is contemplated that the YWCA enter into agreements with these or other service providers, several legal issues must be addressed in order to protect the City from liability. Those issues include the following:

- Liability - which party bears the risk for negligence and intention misconduct, who will be indemnified or held harmless
- Maintenance of appropriate licenses by professionals
- Inclusion of all standard city requirements, such as the ADA provisions and conflict of interest
- City's obligations to provide workspace, computer use, etc, and the City's right to inspect the premises occupied by a provider
- Ownership of data and records; responsibility for responding to subpoenas and other legal processes for those records
- Confidentiality of records, waivers, sharing of information
- Scope of Work-limiting the work of the providers to the needs of the Family Justice Center
- Subcontractors - when they are and are not allowed
- Volunteers and interns - who is responsible and liable for the service provider volunteers

Other legal issues that are not yet resolved are whether the service provider agreements are of the type of contract that have to be competitively bid, or can the director enter in to the agreements without competition or a sole source finding. To the extent there are other agencies that do not provide direct services to victims, is the City's inclusion of those agencies as agencies to whom free rent and equipment nonetheless appropriate? Should the City make other findings with respect to those agencies to make it clear there is no gift of public funds?

**F. Liability Issues**

FJC would still be a City Department but not run by City employees. While the City Attorney's Office and the San Diego Police Department were the main committed partners in launching and operating the FJC, it is the City that is the legal entity behind all actions of the FJC. The City, for example, funded the original site lease; signed the extended five year lease; signed all contractors for construction, parking, and utilities; applied for and received grants; and signed partnership agreements with more than twenty community partner agencies to provide victim services on site. An analysis is necessary to determine how the YWCA's proposal affects the City's liability.

### CONCLUSION

The FJC should be brought back to the City Attorney's Office where it belongs. The City Attorney strongly recommends that the Mayor and City Council take the time to review these issues to allow time for public participation in the process before moving forward. If there is a problem with the leadership of a City department, the solution is for the Mayor to find another department director. The solution most certainly is not for the City to absolve itself from leading the department and to outsource the leadership of that Department to a non-profit, faith-based organization.

If the Mayor and his management team are unable to carry out the mission of the nationally recognized San Diego Family Justice Center, then the solution is to return the leadership of the FJC to its origins – where it was thriving – under the leadership of the City Attorney's Office.

Respectfully submitted,

MICHAEL J. AGUIRRE  
City Attorney

MJA:als  
RC-2008-  
FAMILY JUSTICE CENTER

HONORABLE  
MAYOR AND CITY COUNCIL

-13-

May 6, 2008

FJC would still be a City Department but not run by City employees. While the City Attorney's Office and the San Diego Police Department were the main committed partners in launching and operating the FJC, it is the City that is the legal entity behind all actions of the FJC. The City, for example, funded the original site lease; signed the extended five year lease; signed all contractors for construction, parking, and utilities; applied for and received grants; and signed partnership agreements with more than twenty community partner agencies to provide victim services on site. An analysis is necessary to determine how the YWCA's proposal affects the City's liability.

### CONCLUSION

The FJC should be brought back to the City Attorney's Office where it belongs. The City Attorney strongly recommends that the Mayor and City Council take the time to review these issues to allow time for public participation in the process before moving forward. If there is a problem with the leadership of a City department, the solution is for the Mayor to find another department director. The solution most certainly is not for the City to absolve itself from leading the department and to outsource the leadership of that Department to a non-profit, faith-based organization.

If the Mayor and his management team are unable to carry out the mission of the nationally recognized San Diego Family Justice Center, then the solution is to return the leadership of the FJC to its origins – where it was thriving – under the leadership of the City Attorney's Office.

Respectfully submitted,



MICHAEL J. AGUIRRE  
City Attorney

MJA:als  
RC-2008-11  
FAMILY JUSTICE CENTER

# Exhibit 10

**Webb, Shelley**

---

**From:** Casey Gwinn [Casey@nfjca.org]  
**Sent:** Monday, May 05, 2008 3:11 PM  
**To:** Webb, Shelley  
**Subject:** FW: YWCA Centennial Gala - Family Justice Center Regionalization Vision  
**Attachments:** The Future of the YWCA and the FJC 5 2 08.FJCPartnersForum.doc; FJC Memo.pdf

Shelley,

Not sure if you got this last Friday. I think I had your email address wrong. I also tried to send it to Meg. Thanks for coming over on Friday to talk about our vision for the future of the San Diego FJC. I see the DV and Special Victims Unit as central to that vision if the City Attorney supports having the Unit at 10<sup>th</sup> and C. It would have some logistical challenges but it is doable. We certainly have adequate space.

Thanks so much for your input and feedback.

Casey

Casey Gwinn, J.D.  
 Chief Executive Officer  
 YWCA of San Diego County &  
 President, Board of Trustees  
 National Family Justice Center Alliance  
 1012 C Street  
 San Diego, CA 92101  
 (888)511-FJCA (3522)  
 (619) 980-8883 Cell  
[www.ywcasandiego.org](http://www.ywcasandiego.org)  
[www.familyjusticecenter.org](http://www.familyjusticecenter.org)  
[casey@ywcasandiego.org](mailto:casey@ywcasandiego.org)  
[casey@nfjca.org](mailto:casey@nfjca.org)

**BUY A COPY OF OUR NEW FAMILY JUSTICE CENTER BOOK AT [WWW.VOLCANOPRESS.COM](http://WWW.VOLCANOPRESS.COM) -- "HOPE FOR HURTING FAMILIES: CREATING FAMILY JUSTICE CENTERS ACROSS AMERICA" AND LEARN MORE ABOUT THE GROWING FAMILY JUSTICE CENTER MOVEMENT!**

**MARK YOUR CALENDARS FOR THE SAN DIEGO INTERNATIONAL FAMILY JUSTICE CENTER CONFERENCE FROM APRIL 22-24, 2008 AT THE WESTIN HOTEL AT HORTON PLAZA IN DOWNTOWN SAN DIEGO!**

---

**From:** Casey Gwinn  
**Sent:** Saturday, May 03, 2008 6:04 AM  
**To:** Casey Gwinn; 'Alejandra Ramirez (S)'; 'Armida Valencia'; 'Blanca Lugo'; 'Carly Marodi'; 'Claudia Salas'; 'Dawn Davis'; 'Diane Lass'; 'Elizabeth Vail'; 'Fabiola Figueroa'; 'Gloria Chavez'; 'Haydee Alvarez'; 'Jackie Dietz'; 'Jackie Dietz'; 'Jan Maiden'; 'Jillian Carrick'; 'Kristine Rowe'; 'Kristine Rowe'; 'Lorena Avitea'; 'Maria Gonzalez'; 'Marissa Kaprow (S)'; 'Marissa Kaprow (S)'; 'Maura Casey'; 'Patty Klingenberg'; 'Rosa Villiagrana'; 'Rosemary Willingham'; 'Sarah Streets'; 'Sylvia Guzman'; 'Elizabeth Lee'; 'Cerar, Daniel'; 'Mc elroy, Kimberly'; 'Allison Sepulveda'; 'Anna Vallez'; 'Anya Nevarez'; 'Carly Marodi'; 'Carol Day'; 'Cindy Grossman'; 'Dawn Griffin'; 'Erik Essington'; 'Jennifer Bodine'; 'Manolo Guillen'; 'Mickey Stone'; 'Monica Evans'; 'Stacy Gainok'; 'Sekayan, Tamar';

5/19/2008

'Xiomara Romero'; 'Amanda Quayle, Ph.D.'; 'Andrea Hazen'; 'Bobbie Atkins'; 'Carlos Morales'; 'Carol Day'; 'Caroline Dessert'; 'Casey Gwinn'; 'Cathie & Haywood Martin'; 'Charles Wilson'; 'christisilvaphd@gmail.com'; 'Cindy Casselman'; 'Cissy Pena'; 'Diane McGrogan'; 'Eva Navarro'; 'Evelyn Torres'; 'Jennifer Wu'; 'John Deremiah'; 'John Landsverk'; 'jrosen@sddcss.org'; 'Judi Adams'; 'Linda Wong-Kerberg'; 'Lisa Quinn'; 'Mack Jenkins'; 'Mari Guillermo'; 'May Sanicolas'; 'Mickey Stone'; 'Mickey Stonier'; 'Nancy Moyer'; 'Nita Poole'; 'Ruth Pierce'; 'Sharon Jones'; 'Stephen Standifird'; 'Thomas Collins'; 'Tina Mason'; 'Tracy Prior'; 'Vanessa Kline'; 'Verna Griffin Tabor'; 'SWebb@sandiego.gov'; Carolyn Wilson

**Cc:** 'Edith'; 'Melanie Seales'; 'Debra Zanders - Willis'

**Subject:** RE: YWCA Centennial Gala - Family Justice Center Regionalization Vision

Dear Community-Based FJC Service Delivery Partners,

This week, the YWCA invited the community-based service delivery partners of the San Diego FJC to come to the YWCA to talk about the current YWCA proposal to support the San Diego Family Justice Center. The notes from the meeting are attached. The YWCA proposal was endorsed by Mayor Jerry Sanders this week. The Mayor's memo to the City Council is also included here. Please don't hesitate to call if you have any questions for me or Debra Zanders-Willis, our Chief Operating Officer. We will be working closely with the City during the anticipated transition process in the next two months. We are excited and honored to be part of this plan to ensure the long-term effectiveness and success of the San Diego Family Justice Center and look forward to working closely with all of you.

Casey

Casey Gwinn, J.D.  
*Chief Executive Officer*  
 YWCA of San Diego County &  
*President, Board of Trustees*  
 National Family Justice Center Alliance  
 1012 C Street  
 San Diego, CA 92101  
 (888)511-FJCA (3522)  
 (619) 980-8883 Cell  
[www.ywcasandiego.org](http://www.ywcasandiego.org)  
[www.familyjusticecenter.org](http://www.familyjusticecenter.org)  
[casey@ywcasandiego.org](mailto:casey@ywcasandiego.org)  
[casey@nfjca.org](mailto:casey@nfjca.org)

**BUY A COPY OF OUR NEW FAMILY JUSTICE CENTER BOOK AT [WWW.VOLCANOPRESS.COM](http://WWW.VOLCANOPRESS.COM) -- "HOPE FOR HURTING FAMILIES: CREATING FAMILY JUSTICE CENTERS ACROSS AMERICA" AND LEARN MORE ABOUT THE GROWING FAMILY JUSTICE CENTER MOVEMENT!**

**MARK YOUR CALENDARS FOR THE SAN DIEGO INTERNATIONAL FAMILY JUSTICE CENTER CONFERENCE FROM APRIL 22-24, 2008 AT THE WESTIN HOTEL AT HORTON PLAZA IN DOWNTOWN SAN DIEGO!**



please consider the environment before printing this email

**From:** Casey Gwinn

**Sent:** Wednesday, April 30, 2008 4:29 PM

**To:** Alejandra Ramirez (S); Armida Valencia ; Blanca Lugo ; Carly Marodi; Claudia Salas ; Dawn Davis; Diane Lass; Elizabeth Vail; Fabiola Figueroa ; Gloria Chavez ; Haydee Alvarez ; Jackie Dietz; Jackie Dietz; Jan Maiden; Jillian Carrick; Kristine Rowe; Kristine Rowe; Lorena Avitea ; Maria Gonzalez; Marissa Kaprow (S; Marissa Kaprow (S; Maura Casey; Patty Klingenberg; Rosa Villiagrana ; Rosemary Willingham; Sarah Streets; Sylvia Guzman ; Elizabeth Lee; Cerar, Daniel ; Mc elroy, Kimberly ; Allison Sepulveda; Anna Vallez; Anya Nevarez; Carly Marodi;

5/19/2008



Carol Day; Cindy Grossman; Dawn Griffin; Erik Essington; Jennifer Bodine ; Manolo Guillen ; Mickey Stone ; Monica Evans; Stacy Gainok; Sekayan, Tamar; Xiomara Romero; Amanda Quayle, Ph.D.; Andrea Hazen; Bobbie Attkins; Carlos Morales; Carol Day; Caroline Dessert; Casey Gwinn ; Cathie & Haywood Martin; Charles Wilson; christisilvaphd@gmail.com; Cindy Casselman; Cissy Pena; Diane McGrogan; Eva Navarro; Evelyn Torres; Jennifer Wu; John Deremiah; John Landsverk; jrosen@sddcss.org; Judi Adams; Linda Wong-Kerberg; Lisa Quinn; Mack Jenkins; Mari Guillermo; May Sanicolas; Mickey Stone; Mickey Stonier; Nancy Moyer; Nita Poole; Ruth Pierce; Sharon Jones; Stephen Standifird; Thomas Collins; Tina Mason; Tracy Prior; Vanessa Kline; Verna Griffin Tabor; shrllkbones@aol.com

**Cc:** Edith; 'Melanie Seales'; Debra Zanders - Willis

**Subject:** YWCA Centennial Gala - Family Justice Center Regionalization Vision

Dear San Diego Family Justice Center Community Partners and Friends,

This Saturday, May 3<sup>rd</sup>, the YWCA is hosting its Centennial Gala in La Jolla at the beautiful estate home of Joan Waitt. Joan has been a faithful supporter of the San Diego Family Justice Center and the YWCA for many years. We would be honored to invite you to join us. The Mayor will be attending along with District Attorney Bonnie Dumanis and nearly 400 supporters of the YWCA. The invitation is attached. The cost per ticket is \$175 but we are providing **tickets for FJC partners for the cost of the dinner, which is \$65.** There will be no financial benefit to the YWCA from this cost but we would be honored to have you there as we hear more about the vision of the YWCA and the potential of that vision to provide collaborative support to the day to day work of the San Diego Family Justice Center and each Family Justice Center we will be opening in San Diego County in the coming years. If you would like to attend, we need to know by Noon tomorrow. You can RSVP to Melanie Seales at: [melanie@ywcasandiego.org](mailto:melanie@ywcasandiego.org).

Secondly, we would like to host a luncheon at the YWCA this Friday, May 2<sup>nd</sup>, at Noon at 1012 C Street to share with you our vision for the future of the YWCA and our support for the exciting future of the San Diego Family Justice Center. Please RSVP to Jennifer Harmon at: [jennifer@ywcasandiego.org](mailto:jennifer@ywcasandiego.org) if you can join us Friday at Noon. Though many of the community agency leaders at the Family Justice Center have participated in our planning process over the last six months, the direct service provider staff was not necessarily included in that process.

We would be honored to have you come over to 1012 C Street and hear more about the results of the six month, \$25,000 planning process engaged in by the YWCA Board and staff, FJC Partner agency leaders, and other downtown community service providers related to renovation of our building at 10<sup>th</sup> and C Street and the planned redevelopment of the entire block in the next five years.

Casey

Casey Gwinn, J.D.  
*Chief Executive Officer*  
 YWCA of San Diego County &  
*President, Board of Trustees*  
 National Family Justice Center Alliance  
 1012 C Street  
 San Diego, CA 92101  
 (888)511-FJCA (3522)  
 (619) 980-8883 Cell  
[www.ywcasandiego.org](http://www.ywcasandiego.org)  
[www.familyjusticecenter.org](http://www.familyjusticecenter.org)  
[casey@ywcasandiego.org](mailto:casey@ywcasandiego.org)  
[casey@nfjca.org](mailto:casey@nfjca.org)



# Exhibit 11

# **Report of the Audit Committee of the City of San Diego**

---

INVESTIGATION INTO THE  
SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM  
AND THE CITY OF SAN DIEGO SEWER RATE STRUCTURE

---

AUGUST 8, 2006

ARTHUR LEVITT, JR.

LYNN E. TURNER

TROY A. DAHLBERG

**KROLL**

**WILLKIE FARR & GALLAGHER<sub>LLP</sub>**

## XI. CONCLUSIONS AS TO INDIVIDUAL CULPABILITY

With regard to the City's unlawful financial disclosures, we believe the evidence supports the determination that the following City representatives acted with wrongful intent, i.e., scienter as defined pursuant to Section 10(b) of the Securities Exchange Act of 1934:

Deputy City Manager Patricia Frazier  
City Treasurer Mary Vattimo  
Auditor and Comptroller Ed Ryan  
Deputy Auditor and Comptroller Terri Webster  
SDCERS Administrator Larry Grissom  
Utilities Finance Administrator Dennis Kahlie  
Deputy Director, MWWD William Hanley  
Deputy City Attorney Kelly Salt

As to the City's financial disclosures, we believe the evidence supports a determination that the following City representatives were negligent in the fulfillment of their responsibilities to the City:

City Manager Jack McGrory  
City Manager Michael Uberuaga  
City Attorney Casey Gwinn  
Accounting Division Manager Phil Phillips  
Principal Accountant Rudy Graciano  
Executive Assistant City Attorney Leslie Girard  
SDCERS General Counsel Loraine Chapin  
Senior Deputy City Attorney Ted Bromfield

As to the members of the SDCERS Board of Trustees, we believe the evidence supports the determination that the following SDCERS board members breached their fiduciary responsibilities:

SDCERS Board President Keith Enerson  
Deputy City Manager, SDCERS Board member Bruce Herring  
SDCERS Board member Sharon Wilkinson  
Deputy Auditor and Comptroller, SDCERS Board member Terri Webster  
SDCERS Board member Robert Scannell  
SDCERS Board member Ronald Saathoff  
SDCERS Board member John Torres  
City Treasurer, SDCERS Board member Conny Jamison  
SDCERS Board member John Casey  
City Treasurer, SDCERS Board member Mary Vattimo  
SDCERS Board President Frederick Pierce, IV  
City Human Resources Director, SDCERS Board member Cathy Lexin

As to members of the City Council, we believe the evidence supports a determination that the following Council members were negligent in fulfillment of their bond offering disclosure responsibilities:

✓

Mayor Richard Murphy  
Councilmember Toni Atkins  
Councilmember Donna Frye  
Councilmember Ralph Inzunza  
Councilmember James Madaffer  
Councilmember Brian Maienschein  
Councilmember Scott Peters  
Councilmember George Stevens  
Councilmember Byron Wear

We believe the evidence also supports a determination that, with the exception of Donna Frye, George Stevens, and Byron Wear, those same Councilmembers knowingly and improperly caused the City to violate federal and state law by failing to act in accordance with sewage treatment cost allocation legal mandates.

## Appendix Q

### Report of the City of San Diego Audit Committee

#### Other Issues Addressed by the Audit Committee

##### 1. CITY OF SAN DIEGO GRANTS

The Audit Committee investigated City grants in addition to the Wastewater grants and loans discussed previously. The Audit Committee was informed of, and investigated, potential improper activity related to the Fox Canyon Park and Euclid Avenue grants.

The Audit Committee received information that the City intended to use the proceeds of the \$2.4 million Fox Canyon Park grant to build a road instead of a park. We obtained and considered the grant application and other documentation. We also discussed this grant with individuals, City employees, and employees of the California State Department of Parks and Recreation. Based on the evidence we obtained, our analysis indicated that the City operated appropriately with respect to the Fox Canyon Grant.

The Audit Committee received information the City improperly administrated the \$162,000 Euclid Avenue grant. We obtained and considered the grant application and other documentation. We also discussed this grant with individuals, City employees, and employees of the California Department of Transportation. Based on the evidence we obtained, our analysis indicated the City operated appropriately with respect to the Euclid Avenue Grant.

In performing Single Audit Act work for the fiscal year ended June 30, 2004, the City's external auditors analyzed a significant portion of the City's Federal grants. The Audit Committee considered their analyses, which identified several issues: (1) Costs were recorded in the incorrect fiscal year; (2) the City did not maintain approval documentation in accordance with the requirements of the Department of Housing and Urban Development; and, (3) the City did not maintain documentation related to the suspension or debarment of vendors. The auditors provided recommendations for improvement in these areas. The Audit Committee has reached the conclusion that the issues identified by the auditors do not appear to have compromised the overall integrity of the City's grant monitoring and related financial reporting.

##### 2. CITY ATTORNEY'S OFFICE BILLING PRACTICES

During the Audit Committee's interview with Diann Shipione on June 21, 2006, Ms. Shipione informed the Audit Committee of an allegation regarding the billing practices of the City Attorney's Office.<sup>1</sup> After her interview, Ms. Shipione provided documents revealing that this allegation had been raised by a former employee of the City Attorney's Office. It appeared that one of the documents Ms. Shipione provided had been sent to a number of agencies; however, the Audit Committee has been unable to confirm whether those agencies investigated this issue.<sup>2</sup> The document authored by a former City Attorney Office employee alleged that the City

<sup>1</sup> Interview by the Audit Committee with Diann Shipione (June 21, 2006).

<sup>2</sup> Letter from William R. Newsome, III to Carol Lam, United States Attorney, Jeffrey Koch,

Supervising Assistant Attorney General, Bonnie Dumanis, District Attorney, and Michael Aguirre, City Attorney (Dec. 6, 2004).

Attorney's Office "regularly 'bill[ed] the Water Department' for a set portion of their bi-weekly timecard hours regardless of work actually performed on Water Department business."<sup>3</sup>

Based on discussions with City personnel the Audit Committee learned that an accounting firm, Mayer Hoffman McCann P.C. ("Mayer Hoffman"), was engaged by the City and as part of their engagement they were asked to provide an analysis that identified the application of Wastewater and Water Fund resources toward the General Fund and other Funds.<sup>4</sup> Their original engagement did not specifically address this allegation; however, since it was related to their current engagement they were asked by the City to assist the Audit Committee with its investigation.

Each year the City Attorney's Office enters into service level agreements and/or memorandums of understanding (collectively "SLAs") with various City departments to provide legal services. These agreements are based on estimates of the number of attorneys and support staff that will be needed to support the department. The departments allocate the amount of the SLA into their budgets to fund the cost of those legal services. The City Attorney's Interim Report No. 10 describes the City Attorney's SLA agreements between the Water and Metropolitan Wastewater Department Funds as "similar in nature to a retainer agreement."<sup>5</sup>

At the beginning of each year, the City Attorney's Management Team ("Management Team"),<sup>6</sup> at the direction of Casey Gwinn, projected the number of attorneys and support staff needed to provide services to each department and assigned each of its staff areas of responsibility accordingly. The City Attorney's staff would be instructed to bill their time based on their budgeted areas of responsibility regardless of the actual work performed.<sup>7</sup> For example, an investigator could work on a project for the Water Department, but still be told by their supervisor to bill 8 hours per day to the Metropolitan Wastewater Department. As a result, the investigator would bill the Metropolitan Wastewater Department even though they were actually performing work for the Water Department. Based on an Audit Committee interview with Alyssa Ross,<sup>8</sup> the costs of the services provided by the City Attorney's Office were charged to

<sup>3</sup> Letter from William R. Newsome, III to Carol Lam, United States Attorney, Jeffrey Koch, Supervising Assistant Attorney General, Bonnie Dumanis, District Attorney, and Michael Aguirre, City Attorney (Dec. 6, 2004) (with attachments).

<sup>4</sup> The City engaged Mayer Hoffman in April 2006 to perform agreed upon auditing procedures with respect to the Wastewater and Water Enterprise Funds of the City of San Diego.

<sup>5</sup> City Attorney Michael J. Aguirre, Interim Report No. 10 Report to Auditor Related to Improper Billing Practices by the City Attorney's Office for Service Level Agreements with City of San Diego Water and Wastewater Departments at 1 (July 28, 2006).

<sup>6</sup> The City Attorney's Interim Report No. 10 states that the management team under City Attorney Casey Gwinn ("leadership team") was comprised of Leslie Devaney, Anita Noone, Les Girard, Sue Heath, Gael Strack, Rick Duvernay, Dannell Scarborough, Maria Velasquez, Richel Thaler, and Jean Emmons. City Attorney Michael J. Aguirre, Interim Report No. 10 Report to Auditor Related to Improper Billing Practices by the City Attorney's Office for Service Level Agreements with City of San Diego Water and Wastewater Departments at 1 (July 28, 2006). In an interview conducted by Mayer Hoffman, Robert Abel stated that he felt the management team under Casey Gwinn, who enforced this billing practice, consisted of Anita Noone and Keri Katz. (July 17, 2006)

<sup>7</sup> City Attorney Michael J. Aguirre, Interim Report No. 10 Report to Auditor Related to Improper Billing Practices by the City Attorney's Office for Service Level Agreements with City of San Diego Water and Wastewater Departments at 2 (July 28, 2006).

<sup>8</sup> The City Attorney's Interim Report No. 10 states that Alyssa Ross started at the City Attorney's office in October 2001 to "handle reporting on budgetary issues for the office." City Attorney Michael J. Aguirre,



various departments based on bi-weekly timecards submitted by employees in the City Attorney's Office. This practice, of billing based on management projections, was used by a majority of the employees of the City Attorney's Office.

The Audit Committee has concluded that this was an unethical practice and employees were in fact falsifying their time records.<sup>9</sup> Based on interviews conducted by Mayer Hoffman, some City employees objected to this billing practice and refused to record their time based on management's instructions.<sup>10</sup> City Attorney Interim Report No. 10 relates that during her interview, Anita Noone stated that when employee Patricia Vaughn refused to bill anything but actual time, she "felt that Vaughn needed to be disciplined as she was being insubordinate."<sup>11</sup> Based on the information available, the Management Team did not take the appropriate steps to address the ethical concerns voiced by employees and acted inappropriately by enforcing this billing practice. As City Attorney Michael Aguirre stated in an interview with Mayer Hoffman, "I was just following orders is not a valid excuse" for enforcing a policy of falsifying time records.<sup>12</sup>

It is clear from documents provided to the Audit Committee that the current City Attorney, Mr. Aguirre, was made aware of this allegation soon after he took office in December 2004.<sup>13</sup> Additionally, it appears that he instructed one of his investigators, Robert Abel, to investigate this allegation; however, this investigation was never completed.<sup>14</sup> A memorandum provided to the Audit Committee by Robert Abel, a former employee of the City Attorney's Office, suggests that City Attorney Aguirre instructed Mr. Abel to investigate this issue and that Mr. Abel had asked the City Attorney for additional guidance.<sup>15</sup> Nevertheless, after Mr. Abel produced a memorandum on the subject there was no response that he could recall and the investigation did

---

Interim Report No. 10 Report to Auditor Related to Improper Billing Practices by the City Attorney's Office for Service Level Agreements with City of San Diego Water and Wastewater Departments at 13 (July 28, 2006).

<sup>9</sup> The Audit Committee was provided a copy of the City's time card. The time card states under the employee signature section: "I Certify Labor Hours Above Are Correct"

<sup>10</sup> Patricia Vaughn Interview Memo from Mayer Hoffman (July 28, 2006), Interview by Mayer Hoffman with Anita Noone (July 24, 2006).

<sup>11</sup> City Attorney Michael J. Aguirre, Interim Report No. 10 Report to Auditor Related to Improper Billing Practices by the City Attorney's Office for Service Level Agreements with City of San Diego Water and Wastewater Departments at 6 (July 28, 2006).

<sup>12</sup> Interview by Mayer Hoffman with Michael Aguirre (July 28, 2006).

<sup>13</sup> Letter from William Newsome, III to Carol Lam, Jeffrey Koch, San Diego Ethics Commission, Bonnie Dumanis, and Michael Aguirre (Dec. 6, 2004); City Attorney Michael J. Aguirre, Interim Report No. 10 Report to Auditor Related to Improper Billing Practices by the City Attorney's Office for Service Level Agreements with City of San Diego Water and Wastewater Departments at 3 (July 28, 2006).

<sup>14</sup> Memorandum from Robert Abel, Principal City Attorney Investigator, to Michael J. Aguirre, City Attorney (Dec. 20, 2004).

<sup>15</sup> Memorandum from Robert Abel, Principal City Attorney Investigator, to Michael J. Aguirre, City Attorney (Dec. 20, 2004).

not move forward.<sup>16</sup> Recently, the City Attorney issued Interim Report No. 10, which is a report on the results of the City Attorney's investigation into this allegation.<sup>17</sup>

It appears that a majority of the Management Team, along with prior City Attorneys who created and advocated this practice, no longer work at the City Attorney's Office.<sup>18</sup> Additionally, Mr. Aguirre has indicated that approximately 80% of the attorneys who worked in the Civil Division where this practice was most prevalent, are no longer employed by the City.<sup>19</sup> The Audit Committee has confirmed that the current City Attorney learned of this practice when he took office in December 2004 and immediately instructed his office's employees to accurately record their time.<sup>20</sup> However, recently Mr. Aguirre discovered that employees of the City Attorney's Office billing time for the Civil Enforcement Unit SLA were not complying with Mr. Aguirre's instructions and that their billing was based on a formula instead of reflecting the actual time worked. Mr. Aguirre indicated that he stopped this practice once it was discovered and reiterated his policy of billing actual time to all staff of the City Attorney's Office.<sup>21</sup>

The City provided financial information that the legal expenses charged directly to the enterprise funds by the City Attorney's Office totaled approximately \$20 million from FY 1996 to FY 2003. It appears that it may be difficult if not impossible to determine what the actual charges should have been. However, the evidence which we credit indicates that there were not significant amounts that were overcharged.<sup>22</sup>

The billing practices of the City Attorney's Office – in particular, the falsification of time records resulting in improper charges to enterprise funds – implicate a number of statutes and legal prohibitions. Most prominently, the officials and employees of the City Attorney's Office may be held criminally liable under the California Penal Code pursuant to either Section 72 ("Presenting False Claims") or Section 424 ("Embezzlement and Falsification of Accounts").<sup>23</sup>

---

<sup>16</sup> Interview by Mayer Hoffman with Robert Hoffman (July 17, 2006).

<sup>17</sup> The City Attorney's Interim Report No. 10 identified instances where time cards were altered after they were submitted by an employee. This issue was not identified during our discussions with past and current City employees over the course of our work with Mayer Hoffman.

<sup>18</sup> Interview by Mayer Hoffman with Michael Aguirre (July 28, 2006).

<sup>19</sup> Interview by Mayer Hoffman with Michael Aguirre (July 28, 2006).

<sup>20</sup> City Attorney Michael J. Aguirre, Interim Report No. 10 Report to Auditor Related to Improper Billing Practices by the City Attorney's Office for Service Level Agreements with City of San Diego Water and Wastewater Departments at 3 (July 28, 2006).

<sup>21</sup> City Attorney Michael J. Aguirre, Interim Report No. 10 Report to Auditor Related to Improper Billing Practices by the City Attorney's Office for Service Level Agreements with City of San Diego Water and Wastewater Departments at 3-4 (July 28, 2006).

<sup>22</sup> Interview by Mayor Hoffman with Robert Abel (July 17, 2006); Interview by Mayor Hoffmann with Dannell Scarborough (July 19, 2008).

<sup>23</sup> Cal. Penal Code § 72 (West 2006); Cal. Penal Code § 424 (West 2006). Section 72 prohibits "every person...with intent to defraud" from making "any false or fraudulent claim, bill, account, voucher, or writing" to a public board or officer. Section 424 prohibits public "officers" from, among other things, knowingly making false entries into any account or fraudulently altering an account. As a general intent crime, Section 424 only requires a showing that a violator had a general intent to commit a false act and is easier to prove than Section 72, a specific intent crime requiring a showing of a specific intent to defraud. *People v. Battin*, 77 Cal. App. 3d 635, 664 (Cal. Ct. App. 1978) ("A violation of Penal Code section 72

The latter provision has been applied to the specific context of the falsification of employee time records.<sup>24</sup> While in that particular case the defendant profited from the falsification of time cards, a violator of Section 424 does not necessarily have to personally benefit from the false claim or transaction or have direct control over the funds at issue.<sup>25</sup> Under the facts at hand, any officials of the City Attorney's Office who are found to have intentionally falsified their time records or directed and encouraged others to do so could be held liable under Section 424 for the misappropriation of public funds. While Section 424 applies explicitly to public officers, courts have found that it may apply to secondary employees as well under a theory of liability for aiding and abetting a principal violation.<sup>26</sup> Thus, subordinates within the City Attorney's Office who recorded false billing entries at the prompting of their superiors may also be held liable for aiding and abetting their superior's breach of Section 424.<sup>27</sup>

Several provisions of the San Diego City Charter and San Diego Municipal Code may also apply to the false billing scheme at the City Attorney's Office. In particular, City Charter Section 71 sets limitations on the appropriations of the general operations of the City, restricting the growth in expenses from the City's General Fund from year-to-year to a certain percentage.<sup>28</sup> The City Attorney's Office's billing practices – which, in all likelihood, were motivated by a desire to circumvent this fiscal limitation by qualifying for and siphoning monies from the City's separate enterprise funds – most likely violated Section 71. San Diego Municipal Code Section 11.0401 provides that all applicants for "City licenses, permits, certificates, employment or other City actions...should be required to furnish true and complete information."<sup>29</sup> To the extent falsified time records were presented to City Council and served as the basis of an action taken by the City (for example, allocating budget expenses or providing the foundation to transfer money from one fund to another) this provision was likely violated.<sup>30</sup>

---

cannot be accomplished without the requisite intent to defraud. No such intent, however, is required of a violation of section 424"), *superseded by statute on other grounds*, Cal. Penal Code § 1424 (West 2006).

<sup>24</sup> *People v. Groat*, 19 Cal. App. 4th 1228, 1235 (Cal. Ct. App. 1993) (holding the manager of the City Department of Public Safety liable for misappropriating funds under Section 424 for "acts of falsifying her time cards and accepting pay for work not performed").

<sup>25</sup> *Webb v. The Superior Court of Tulare County*, 202 Cal. App. 3d 872, 887 (Cal. Ct. App. 1988) ("[I]t is not necessary that [the violator] have actual custody of the public moneys. The fact that petitioner was not directly, in his job description or the common responsibilities of his position, charged with receipt, safekeeping, transfer or disbursement of public funds does not necessarily preclude a prosecution under section 424."); *People v. Johnson*, 14 Cal. App. 2d 373, 381 (Cal. Ct. App. 1936) (holding that Section 424 covers a case where an official "intentionally and knowingly disobeys the law and it is not necessary to prove that in thus disregarding the law he also intended to defraud the public or to acquire financial gain for himself.").

<sup>26</sup> *People v. Qui Mei Lee*, 48 Cal. App. 3d 516, 520 (Cal. Ct. App. 1975) (holding a secretary liable as an aider and abettor of her supervisor's violations of Section 424 for misappropriating public funds).

<sup>27</sup> Additionally, if it is demonstrated that either officials or non-officials had the specific intent to present the falsified billing records to City Council (a city "board") in order to defraud (a stricter standard than presented by Section 424), those individuals may also be held accountable under Section 72. *People v. Battin*, 77 Cal. App. 3d 635, 664 (Cal. Ct. App. 1978), *superseded by statute on other grounds*, Cal. Penal Code § 1424 (West 2006).

<sup>28</sup> San Diego City Charter art. VII, § 71.

<sup>29</sup> San Diego Municipal Code § 11.0401 (emphasis added).

<sup>30</sup> Municipal Code Section 12.0102 provides for the enforcement of violations of the Code by the City Manager, the City Clerk or any of their designated Enforcement Officials. San Diego Municipal Code §

Additionally, under California's Proposition 218 ("Prop 218") (a constitutional amendment passed by California voters in 1996),<sup>31</sup> it has been held that "revenue derived from a fee shall be used only for the purpose for which the fee was charged..."<sup>32</sup> Here, in many instances time was billed to the Water and MWWF funds for work that was not actually performed. Since no services were actually provided, ratepayers bore a cost without receiving any corresponding benefit. While there is a question currently before the California Supreme Court about whether Prop 218 applies to water fees, assuming it does, the City Attorney's Office's billing practices likely violated it.

Based on evidence we obtained and the allegations presented to us we have conducted a thorough and complete investigation and have concluded that the questionable practices identified have been stopped. In addition, we have determined on the basis of credible evidence that those involved are no longer employed or possess managerial responsibility within the City Attorney's Office.<sup>33</sup>

### 3. SDCERS INVESTMENT MANAGER

The Audit Committee investigated the allegation made by Ms. Shipione in her May 23, 2002, letter to Fred Pierce that there is a concern that SDCERS's outside investment manager, Callan, engages in a "regular practice of recommending less than fully experienced or successful investment managers after manager searches."<sup>34</sup> During the Audit Committee's interview with Ms. Shipione, she clarified this statement by explaining that her concern was Callan's not recommending the termination of underperforming investment managers.<sup>35</sup> In addition, Ms. Shipione stated that she received a disclosure from Callan concerning its relationships with its investment managers; however, she remains concerned that there may be more indirect relationships that could impair the objectivity of Callan's advice.<sup>36</sup>

Concerning the allegation of Callan not recommending the termination of underperforming investment managers, the Audit Committee noted that this is the responsibility of the SDCERS Board. The SDCERS Board receives monthly updates during open session Board meetings concerning poorly performing (but currently engaged) money managers. These money managers are placed on a "Vendor Watch List" and are eventually terminated if their performance does not improve. Additionally, by engaging in this process of placing underperforming managers on a watch list, the SDCERS Board appears to be taking appropriate steps to ensure that money

---

12.0102. Remedial measures may include administrative civil penalties or injunctions, among other enforcement measures. San Diego Municipal Code §§ 12.0801-12.0810; San Diego Municipal Code §12.0202.

<sup>31</sup> Right to Vote on Taxes Act, art. XIII D § 6(b)(3).

<sup>32</sup> *Howard Jarvis Taxpayers Association v. City of Fresno*, 127 Cal. App. 4th 914, 923 (2005).

<sup>33</sup> City Attorney Michael J. Aguirre, Interim Report No. 10 Report to Auditor Related to Improper Billing Practices by the City Attorney's Office for Service Level Agreements with City of San Diego Water and Wastewater Departments at 1, 3-4 (July 28, 2006); Mayer Hoffman Interview Memorandums.

<sup>34</sup> Letter from Diann Shipione, Trustee, to Fred Pierce, Chair SDCERS Board (May 23, 2002).

<sup>35</sup> Interview by the Audit Committee with Diann Shipione (June 21, 2006).

<sup>36</sup> Interview by the Audit Committee with Diann Shipione (June 21, 2006).

managers engaged by the System are operating within the standards set by the System. However the Audit Committee does recommend that the SDCERS Board review its current practice of terminating poorly performing investment managers to determine if their current policy is sufficient.

The City Attorney is currently investigating the allegation regarding Callan's relationship with its investment managers. The City Attorney has filed a suit against Callan on behalf of the City of San Diego charging that Callan engaged in a "pay to play" scheme in the selection of investment managers for SDCERS and that Callan failed to disclose these relationships.<sup>37</sup> The resolution of the pending lawsuit will provide definitive determination of this issue.

#### 4. RULES COMMITTEE PRESENTATION

Ms. Shipione alleged in her letter to Fred Pierce on September 7, 2003, that SDCERS altered numbers in their February 2003 Rules Committee Presentation which she presented to the Port Authority, between the time they provided a copy of the presentation to her and the time the presentation was actually provided to the Rules Committee.<sup>38</sup>

The Audit Committee has confirmed with Ms. Shipione that this allegation was simply the result of a disagreement between herself and others at SDCERS concerning the accuracy of pension information contained in a PowerPoint slide she used during a presentation she made to the Port Authority.<sup>39</sup> The Audit Committee reviewed email correspondence between SDCERS staff and Ms. Shipione and has concluded that this allegation was simply a misunderstanding that does not warrant further investigation.<sup>40</sup>

#### 5. ACTUARIAL VALUATION PAYROLL

The Audit Committee investigated the allegation that the City does not maintain accurate payroll numbers and that those inaccuracies could result in an inaccurate valuation of SDCERS's assets and liabilities.<sup>41</sup> Ms. Shipione explained in her interview with the Audit Committee that she was concerned with the accuracy of payroll data because April Boling was unable to match payroll data between the City and SDCERS.<sup>42</sup>

The Audit Committee spoke with City personnel and obtained an understanding of the process used to transmit the City's payroll data to SDCERS. In addition, the City's Internal Audit Department performed an audit of the payroll data provided to Towers Perrin for the June 30, 2004 valuation and found no significant differences between the data used for the valuation and the City's payroll data. Based on the Audit Committee's analysis of the preceding facts, it

<sup>37</sup> First Amended Complaint at 19-20, *City of San Diego v. Callan Associates, Inc.*, No. GIC 852416 (Cal Super. Ct. Aug. 18, 2005).

<sup>38</sup> Letter from Diann Shipione to Fred Pierce, SDCERS President (Sept. 7, 2003).

<sup>39</sup> Interview by the Audit Committee with Diann Shipione (June 21, 2006).

<sup>40</sup> Email from Diann Shipione Shea to Lawrence Grissom (Aug. 26, 2003); Email from Cathy Lexin to Diann Shipione (Aug. 19, 2003); Email from Paul Barnett to Fred Pierce (Feb. 6, 2003).

<sup>41</sup> Email from Diann Shipione Shea to Steve DeVetter, Andrew Paulden, and Amanda Wilson (Oct. 29, 2004).

<sup>42</sup> Interview by the Audit Committee with Diann Shipione (June 21, 2006).

appears that accurate payroll information is used as the basis to preparing the SDCERS's actuarial valuations.

## 6. WATER RATES

Ms. Shipione made several allegations of impropriety against the City of San Diego in her October 29, 2004 memorandum.<sup>43</sup> Each allegation discussed herein relates to judgments made by the City about the applicability of Prop 218 to various fees and charges, and the City's need to comply with Prop 218. The evidence shows the City made these decisions while interpreting and applying relevant case law. In each instance, the City thoroughly disclosed its decision and the potential impact of the City's decision in the event that later case law rendered its actions improper. Therefore, the allegations discussed below appear to lack merit.

### A. Water Rate Increases

In her October 2004 memorandum, Ms. Shipione alleged that, "[s]eparately, the City does admit it did not comply with State law/requirements when it increased water rates in FY 2002 and 2003 and further admits it may be challenged for the rate increases effective 2004, 2005, and 2006."<sup>44</sup> This allegation appears to have been derived from a voluntary disclosure filed by the City on March 26, 2004, related to its Water Utility Fund. There, the City disclosed that it complied with the notice and public hearing requirements of Section 6 of Article XIIID (Prop 218) when the City increased its water service rates effective August 13, 1997, July 1, 1998, and July 1, 1999, but that "relying on a California Court of Appeals case decided in 2000" the City concluded it was not necessary to, and therefore did not, comply with the notice and public hearing provisions when the City increased water service rates in July 1, 2002 and July 1, 2003.<sup>45</sup> The Voluntary Disclosure stated that because "the City [ ] approved rate increases effective on July 1 in each of 2004, 2005, and 2006...those rate increases may likewise be subject to challenge."<sup>46</sup> Previously, the City had disclosed its decision not to comply with Prop 218.<sup>47</sup> Relying on "an intermediate appellate court decision issued in 2000," in its 2002 Water Bond Offering, the City concluded it was not obligated to, and thus would not, notice water rate increases.<sup>48</sup> It continued that: "The

<sup>43</sup> Email from Diann Shipione Shea to Steve DeVetter, Andrew Paulden, and Amanda Wilson (Oct. 29, 2004).

<sup>44</sup> Email from Diann Shipione Shea to Steve DeVetter, Andrew Paulden, and Amanda Wilson (Oct. 29, 2004).

<sup>45</sup> Municipal Secondary Market Disclosure for \$385,000,000 Certificates of Undivided Interest In Installment Payments Payable From Net System Revenues Of the Water Utility Fund of the City of San Diego, California, Series 1998 at 5-6 (Mar. 26, 2004).

<sup>46</sup> Municipal Secondary Market Disclosure for \$385,000,000 Certificates of Undivided Interest In Installment Payments Payable From Net System Revenues Of the Water Utility Fund of the City of San Diego, California, Series 1998 at 6 (Mar. 26, 2004).

<sup>47</sup> The 2002 Water Bond Offering states, "If Proposition 218 is determined to apply to water capacity charges and other water fees and charges, these and other fees and charges of the Water System may need to be revised in order to satisfy the requirements of Proposition 218." \$286,945,000 Public Facilities Financing Authority of the City of San Diego, Subordinated Water Revenue Bonds, Series 2002 at 29 (Oct. 8, 2002).

<sup>48</sup> \$286,945,000 Public Facilities Financing Authority of the City of San Diego, Subordinated Water Revenue Bonds, Series 2002 at 30 (Oct. 8, 2002). The "intermediate appellate court decision issued in 2000" that addressed this issue was *Howard Jarvis Taxpayers Association v. City of Los Angeles*, 85 Cal. App. 4th 79 (Cal. Ct. App. 2000).

interpretation and application of Prop 218 will ultimately be determined by the courts or through implementing legislation with respect to a number of the matters discussed above, and it is not possible at this time to predict with certainty the outcome of such determination or the nature or scope of any such legislation.”<sup>49</sup> The City further described the potential impact of its noncompliance with Prop 218, stating that, “[i]f Proposition 218 is determined to apply...fees and charges of the Water System may need to be revised.”<sup>50</sup> Since the Court of Appeals decision, numerous Courts have found that the noticing and public hearing requirements of Prop 218 do not apply to water rates because of an express carve-out found in Section 6, Article XIII D of Prop 218, further strengthening the City’s initial conclusion that such noticing was unnecessary.<sup>51</sup>

Ms. Shipione’s allegation thus appears to lack merit because: (1) the City disclosed its decision not to notice and follow public hearing requirements regarding water rates, and also disclosed that it could be found to be in violation of Prop 218 as a result of its decision; (2) the City further disclosed the potential financial impact if it were found to be in noncompliance; and (3) the City relied on case law holding that the noticing and hearing requirements of Prop 218 did not apply to water service charges. This finding has since been confirmed by other courts.<sup>52</sup>

## **B. Uncommitted Cash Reserves in a Rate Stabilization Fund**

Ms. Shipione alleged that, “[t]he City’s practice of charging water service rates based upon maintaining uncommitted cash reserves in a Rate Stabilization Fund is highly controversial, may not comply with State law and the City routinely recognizes that it may have to give all this money back.”<sup>53</sup> The City disclosed in its 2002 Water Bond Offering that it had a Rate Stabilization Fund that maintained uncommitted cash reserves for later use, to pay

---

<sup>49</sup> \$286,945,000 Public Facilities Financing Authority of the City of San Diego, Subordinated Water Revenue Bonds, Series 2002 at 31 (Oct. 8, 2002).

<sup>50</sup> \$286,945,000 Public Facilities Financing Authority of the City of San Diego, Subordinated Water Revenue Bonds, Series 2002 at 29 (Oct. 8, 2002).

<sup>51</sup> *Richmond v. Shasta Community Services District*, 32 Cal. 4th 409, 427 (Cal. 2004) (finding that “...subdivision (c) of article XIII D, section 6, [ ] expressly excludes ‘fees or charges for sewer, water, and refuse collection services’ from the voter approval requirements...”); *Bighorn-Desert View Water Agency v. Berington*, 15 Cal. Rptr. 3d 911, 916 (Cal. Ct. App. 2004) (“As Article XIII D plainly makes an exception for fees or charges for water services, Bighorn’s rates and charges for water service can be imposed without voter approval and are not subject to Proposition 218’s voter initiative power.”); *Howard Jarvis Taxpayers Association v. City of Salinas*, 98 Cal. App. 4th 1351 (Cal. Ct. App. 2002).

<sup>52</sup> *Richmond v. Shasta Community Services District*, 32 Cal. 4th 409, 427 (Cal. 2004) (finding that “...subdivision (c) of article XIII D, section 6, [ ] expressly excludes ‘fees or charges for sewer, water, and refuse collection services’ from the voter approval requirements...”); *Bighorn-Desert View Water Agency v. Berington*, 15 Cal. Rptr. 3d 911, 916 (Cal. Ct. App. 2004) (“As Article XIII D plainly makes an exception for fees or charges for water services, Bighorn’s rates and charges for water service can be imposed without voter approval and are not subject to Proposition 218’s voter initiative power.”); *Howard Jarvis Taxpayers Association v. City of Salinas*, 98 Cal. App. 4th 1351 (Cal. Ct. App. 2002).

<sup>53</sup> Email from Diann Shipione Shea to Steve DeVetter, Andrew Paulden, and Amanda Wilson (Oct. 29, 2004).

Maintenance and Operation Costs of the Water System.<sup>54</sup> Regarding Prop 218 it stated, “[i]t is unclear whether under the foregoing standards rates and charges may be established at levels which would permit deposits to a Rate Stabilization Fund or maintenance of uncommitted cash reserves.”<sup>55</sup> The 2002 Water Bond Offering also disclosed the amount held in its Rate Stabilization Fund (indicating what the impact could be if such a Fund were found to violate Prop 218).<sup>56</sup> The disclosure stated that “[a]s of June 30, 2002, the amount on deposit in the Rate Stabilization Fund was \$26,500,000.”<sup>57</sup> The City’s potential noncompliance with Prop 218 regarding the Rate Stabilization Fund was again disclosed in the March 26, 2004 Voluntary Disclosure for Water.<sup>58</sup>

At the time of the City’s 2002 Water Bond Offering, the case law suggested that the City could continue its practice of maintaining uncommitted cash reserves in a Rate Stabilization Fund without violating Prop 218.<sup>59</sup> For example, in *Howard Jarvis Taxpayers Association v. City of Los Angeles*, the Court held that the City of Los Angeles could transfer a surplus of approximately \$87 million from the water revenue fund to the city’s reserve fund and then to the city’s general fund without violating Prop 218 because the City Charter “ma[de] it clear that any transfer from the Water Revenue Fund to the Reserve Fund was a lawful exercise of the City’s power.”<sup>60</sup> Here, funds in the Rate Stabilization Fund established within the Water Utility Fund were not transferred to other funds to be used for other purposes, but rather only used for the water system, making the City’s Rate Stabilization Fund even less

<sup>54</sup> \$286,945,000 Public Facilities Financing Authority of the City of San Diego, Subordinated Water Revenue Bonds, Series 2002 at 9 (Oct. 8, 2002).

<sup>55</sup> \$286,945,000 Public Facilities Financing Authority of the City of San Diego, Subordinated Water Revenue Bonds, Series 2002 at 30 (Oct. 8, 2002).

<sup>56</sup> \$286,945,000 Public Facilities Financing Authority of the City of San Diego, Subordinated Water Revenue Bonds, Series 2002 at 9 (Oct. 8, 2002).

<sup>57</sup> \$286,945,000 Public Facilities Financing Authority of the City of San Diego, Subordinated Water Revenue Bonds, Series 2002 at 9 (Oct. 8, 2002).

<sup>58</sup> The Disclosure stated: “Although *Richmond* has clarified some of the uncertainty surrounding the application of Section 6 of Article XIID to water service fees and charges, what remains unclear and what the Court did not address is whether the City’s practice of establishing rates and charges at levels which permits deposits to a Rate Stabilization Fund or maintenance of uncommitted cash reserves complies with the requirements of Section 6 of Article XIID. The clarification of this issue will ultimately be determined by the courts or through implementing legislation, and it is not possible at this time to predict with certainty whether this practice will be upheld as valid.” Municipal Secondary Market Disclosure for \$385,000,000 Certificates of Undivided Interest in Installment Payments Payable From Net System Revenues Of the Water Utility Fund of the City of San Diego, California, Series 1998 at 7 (Mar. 26, 2004).

<sup>59</sup> See e.g., *Howard Jarvis Taxpayers Association v. City of Los Angeles*, 85 Cal. App. 4th 79 (Cal. Ct. App. 2000). For example, the Water Bond Offering disclosed that “[i]n an intermediary appellate court decision issued in 2000, it was held that water service fees and charges, where based primarily on consumption were not ‘fees’ or ‘charges’ within the meaning of Article XIID...Even though the City believes that its water rates and capacity charges are not subject to Article XIID, the City believes that they comply with the foregoing standards. It is unclear whether under the foregoing standards rates and charges may be established at levels which would permit deposits to a Rate Stabilization Fund or maintenance of uncommitted cash reserves.” \$286,945,000 Public Facilities Financing Authority of the City of San Diego, Subordinated Water Revenue Bonds, Series 2002 at 30 (Oct. 8, 2002).

<sup>60</sup> *Howard Jarvis Taxpayers Association v. City of Los Angeles*, 85 Cal. App. 4th 79, 84 (Cal. Ct. App. 2000).



susceptible to a Prop 218 challenge than the funds of the City of Los Angeles.<sup>61</sup>

Therefore, Ms. Shipione's allegation regarding the Rate Stabilization Fund appears to be unfounded because (1) the City fully disclosed that it maintained a Rate Stabilization Fund and that it may not comply with Prop 218; (2) the City disclosed the amount in the Rate Stabilization Fund; and (3) case law during the relevant period indicated that the Rate Stabilization Fund as used by the City likely did not violate Prop 218.

### C. Disguised Tax

Ms. Shipione alleged that, "the City has imposed and collected other fees, including but not limited to a storm-water 'fee' and an underground utility 'fee'...both of which impose a charge without voter approval."<sup>62</sup> She also recognized that the City disclosed that if Prop 218 applied, it may have to return funds received: "The City has recognized, in the past, though not necessarily in its financial statements, the likelihood that the sums collected, if challenged in court, would be ordered returned as being a disguised 'tax' not in compliance with 218 and other State laws."<sup>63</sup>

As Ms. Shipione herself acknowledged, the City had "recognized" (*i.e.* disclosed) in the past that a court could disagree with the City's conclusion about the applicability of Prop 218 to certain of its fees and charges. For example, the 2002 Water Bond Offering disclosed that fees and charges imposed by the City could be deemed to be subject to Prop 218, which could have an impact on the City's fiscal health.<sup>64</sup>

In short, the assertion that the City could be ordered to repay fees and charges if the fees were found to have been collected in violation of Prop 218 is a correct statement. However, the City fully disclosed this possibility and it relied on prevailing case law in reaching

---

<sup>61</sup> The Water Bond Offering disclosure stated that amounts deposited by the City into the Rate Stabilization Fund "may be transferred from the Rate Stabilization Fund solely and exclusively to pay Maintenance and Operation Costs of the Water System, and any amounts so transferred shall be deemed System Revenues when so transferred." \$286,945,000 Public Facilities Financing Authority of the City of San Diego, Subordinated Water Revenue Bonds, Series 2002 at 9 (Oct. 8, 2002).

The most recent case addressing facts that are analogous to this case is *Howard Jarvis Taxpayers Association v. City of Fresno*, 127 Cal. App. 4th 914 (Cal. Ct. App. 2005). There, the Court held that a fee for general government activities that was assessed against the utilities and then passed on to the ratepayers violated Proposition 218. However, the Court explicitly stated that the revenues from the fees that were charged were used for purposes other than that for which the fees were imposed, unlike the situation involving the City's Rate Stabilization Fund.

<sup>62</sup> Email from Diann Shipione Shea to Steve DeVetter, Andrew Paulden, and Amanda Wilson (Oct. 29, 2004).

<sup>63</sup> Email from Diann Shipione Shea to Steve DeVetter, Andrew Paulden, and Amanda Wilson (Oct. 29, 2004).

<sup>64</sup> The Water Bond Offering disclosed, "the City's general financial condition may be affected by other provisions of Article XIII C and Article XIII D, including...provisions of Article XIII D that could reduce the ability of the City to fund certain services or programs that it may be required or choose to fund from its general fund, such as provisions...requiring any imposition or increase of property related fees or charges other than for sewer, water and refuse collection services or fees for electrical or gas service (which are not treated as property related for purposes of Article XIII D) to be approved by a 'Majority of the property owners' subject to the fee or charge." \$286,945,000 Public Facilities Financing Authority of the City of San Diego, Subordinated Water Revenue Bonds, Series 2002 at 31 (Oct. 8, 2002).

conclusions about the applicability of Prop 218 to its various fees and charges. Therefore, Ms. Shipione's allegation appears to lack merit.

#### **D. Conclusion**

The issues Ms. Shipione raises in her memorandum were disclosed by the City. Their potential financial impact on the City was also disclosed. Case law was consistent with the City's interpretation with respect to each issue. Therefore, Ms. Shipione's allegations are unfounded.

# Exhibit 12

May 2, 2008 ~ Noon

**Meeting Purpose:** to hear more about the results of the six month planning process engaged in by the YWCA Board and staff, FJC Partner agency leaders, and other downtown community service providers related to renovation of the historic YWCA Main building at 10<sup>th</sup> and C Street and the planned redevelopment of the entire block in the next five years. All community-based agency FJC partners were invited to this initial question and answer session. The City Attorney's Office asked to attend and also participated in the meeting.

**Agencies and Organizations represented at meeting:**

YWCA (4)  
 City Attorney's Office (2)  
 Rady Children's Hospital – Center for Child Protection (3)  
 Crime Victims Fund (1)  
 HHSA Office on Violence Prevention (1)  
 County Department of Probation (1)  
 East County Family Justice Center (1)  
 Center for Community Solutions (2)  
 FJC counseling Services (1)  
 FICA (1)  
 FJC Volunteers (2)

**Proposal of the YWCA – Casey Gwinn (YWCA CEO)**

The YWCA invested \$25,000 over the last six months to study the feasibility of operating the San Diego Family Justice Center out of the historic YWCA Main Building at 1012 C Street by March 2010. The YWCA presented before the FJC Community Partners meeting, invited community-based agency partners to strategic planning meetings at the YWCA, held internal and external planning meetings related to the larger vision of the YWCA, conducted focus groups with domestic violence survivors in San Diego, met with the San Diego FJC VOICES Committee (former clients of the San Diego Family Justice Center). The City's Family Justice Center director was invited to participate in the YWCA's community partner meetings and did participate. The ultimate vision and plan will focus the YWCA in two areas: Housing and collaborative leadership on issues related to victims of family violence and their children. At the conclusion of the entire planning process, the YWCA Board of Directors unanimously endorsed the plan and committed to raise over \$13 million in a capital campaign to ensure the success of the vision.

On March 27, 2008, YWCA Board President Roberta Spoon sent a formal proposal to the Mayor's Office for review. The proposal includes a short-term and long-term component. Yesterday, the Mayor endorsed the YWCA proposal including the short-term proposal to have the YWCA provide management and coordination services to the community-based partner agencies and the client services functions of the San Diego Family Justice Center. The short-term proposal will save the City at least \$326,000 per fiscal year for the next two years based on current expenses. The long-term proposal focuses on renovating the YWCA Main building in order to provide a permanent home for the San Diego Family Justice Center by March 2010. The YWCA will raise \$13 million in capital to fund this effort. The Mayor will ask the City Council to support a ten year lease agreement that will pay the YWCA an initial amount of \$900,000 per year starting in 2010 to provide space for the City Attorney's Domestic Violence and Special Victims Unit (7,200 square feet), the San Diego Police Department's Domestic Violence and Elder Abuse Units (7,300 square feet), and space for the allied agencies of the FJC. The layout will be determined in consultation with all public and private partner agencies of the San Diego Family Justice Center in the coming months.

The current YWCA long-term proposal for the San Diego FJC results in an annual savings to the City of over \$700,000 per year for the anticipated 10 year lease term, for a total savings to the City of more than \$7 million. While providing major savings to the City, the proposal will also ensure the long-term sustainability of the Family Justice Center and lay the groundwork for the Family Justice Center Network regionalization plan which will ultimately envision the creation of 4-5 regional Family Justice Centers with coordination of this system provided by the District Attorney's Office and the City of San Diego. The Mayor has endorsed the regionalization plan. The regionalization plan currently includes

planning open the East County Family Justice Center later this year under the leadership and coordination services of the Center for Community Solutions. Other Centers should be developed in coordination with the needs of North County as well building on the operations of the North County Family Violence Prevention Center founded by Supervisor Pam Slater-Price in 2004. South Bay Community Services has a different collaborative model in South Bay but is pursuing a similar co-location vision in partnership with the Chula Vista Police Department in their new building.

The YWCA Building will provide the San Diego FJC with a dynamic, synergistic environment for FJC clients and their children including the renovation of the pool, gym, and fitness center areas of the building. The building will become a beacon of hope while also serving as a community resource center for the east side of downtown. The building can house activities to benefit affordable housing residents in the area, City College students, FJC clients and staff, YWCA clients and staff, and the general public. All the details of space allocation in the renovated building have not been worked out and consultation will need to take place with the City Attorney, District Attorney, Police Department, FJC community-based non-profit agencies, and other FJC partners and allies in the coming months. But the vision is clear, the funding plan is clear, and the savings to the City are substantial. The vision promises to provide a national model for service delivery for victims of domestic violence and their children.

The YWCA plan will also require the support of the Redevelopment Agency and the Housing Authority to lift the current housing restrictions on the YWCA Main Building so that the YWCA can move its housing units to allow for the complete renovation of the nearly 90 year old building. The construction needs to start by January 2009 to ensure completion by March 2010 when the San Diego Family Justice Center needs a new home. Time is very short!

The Mayor, the City Attorney, the District Attorney, the Police Chief, and all of us here are committed to the long-term success and effectiveness of the San Diego Family Justice Center and this proposal will clearly ensure that success. It is the most successful, powerful, lifesaving collaboration ever created to help save the lives of victims of family violence and their children. San Diego launched a national and international movement through this Center and now we must prove that we can all come together to reinvigorate the Center, expand it to a regional vision, and ensure its long-term sustainability.

(After a brief presentation by Casey Gwinn and Debra Zanders-Willis of the YWCA, the remainder of the meeting was a question and answer session with YWCA leadership and FJC partners)

**\* and A between FJC community partners, Casey Gwinn, and Debra Zanders-Willis (YWCA COO)**

Q. How will the new director for the FJC be selected?

A. This will be a collaborative process, community partners will be involved. We will conduct a local and national search. There are some great local people and there are some great FJC directors around the country that might be interested in moving to San Diego. The decision will be made by the YWCA with input from everyone.

Q. What is going to happen with the FJC Info Line (866-933-HOPE)?

A. We need to revisit this issue. It was never intended to replace the county DV hotline. Originally it was answered live by volunteers during working hours and then a recording referred to the county hot line after hours.

Meeting Participant Comments: The 1-888-DVLINKS function and the FJC Information line need to be coordinated. Today, the voicemail system of the INFO Line is very frustrating to clients. Currently, it is not answered live and takes callers through a series of "press this number" responses until folks just give up. Agreement all around that this will be a high priority; lots of concern over the fact that it is not being answered by a live person. The YWCA committed that it will be answered live again after the transition to YWCA coordination services.

Q. Will partners be charged rent?

A. No. That goes against the fundamental principles of operating an FJC. This doesn't mean, however, collaborating agencies at the FJC couldn't write a grant for a new program and include a line item in the budget to cover part of the rent. That's how the Archstone grant was designed to work, to pay part of the rent for the DA's social worker housed at FJC. Other FJCs have successfully pursued this strategy based on a mutual agreement. But the fundamental principle is that individual non-profits will not have to pay rent to be part of the FJC.

Q. What will happen to the volunteer program?

A. A volunteer coordinator has been selected by Camp HOPE and is due to start the FJC on May 5<sup>th</sup>. The volunteer coordinator position must become an employee of the YWCA since all management and supervision positions related to the FJC (currently handled by City employees) will be YWCA employees under the agreement with the Mayor. We will discuss this matter with Mickey Stone. All funds which have been previously raised to benefit the San Diego Family Justice Center will be used to directly support the day to day work of the FJC and its partner agencies. The YWCA will raise money to support the non-city funded needs of the San Diego FJC and work with Camp HOPE on the funds currently held for the benefit of the Family Justice Center. Previously, this was a function of the San Diego Family Justice Center Foundation. The Volunteer program will be rebuilt immediately and former volunteers will be recruited back to the FJC. Within one year, we will rebuild the volunteer program to its strength level in May, 2007 of 120 active volunteers.

Meeting Participant Comments: Excellent. Volunteers are crucial. Some days now there are only a handful of volunteers. Last week, days with only 1 volunteer at the FJC!

Q. Will the Children's Room be re-opened?

A. Yes. Sea World is still interested in redesigning the Children's Room. We (Casey and Diane McGrogan) will contact them again and resume those conversations. The YWCA will recruit and train qualified volunteers to work in the Children's Room. The YWCA's clinical program has an excellent intern program and clinical interns may be used to staff the Children's Play room and assist with intakes. The YWCA also has staff positions (Children's Coordinators) that will assist with the Children's Room activities.

Meeting Participant Comments: Wonderful. Thank goodness. Finally!

Q. Will the Client Services Coordinator be filled?

A. We don't know yet. We do know that the YWCA will provide a comprehensive client services team at the FJC, but what that will look like we will need to do some planning about with all the community partners. The YWCA counseling team will play a key role in this.

Meeting Participant Comments: Interns can help a great deal. We can all work on this together.

Q. Will Anabel continue to manage grants at the FJC? What about the current federal grant that is stalled and has funding for several partners, SDPD, CCS, Probation, City Attorney, and Adams & Adams?

A. Anabel will be relocating to another department in the city. With the exception of the FJC director, all city staff will be reassigned to different departments. The current FJC director is the only city staff person that does not have a particular position or classification to move to as a result of this change. Sandra's federally funded position will remain at the FJC, funded by the federal grant. The YWCA has the capacity to assume grant management responsibilities working closely with the City. OVW has already indicated their willingness to work with the City and the YWCA to ensure a smooth transition. The federal grant funds are in the City and accessible for draw down. CCS is drawing down their funds from the City. Other partners are not. There was supposed to be a probation officer assigned to the project. We don't know the status on that. These issues will be identified in the next 60-90 days. We will also work with the federal government to obtain the Forensic Medical Unit grant if possible.

Meeting Participant Comments: All aspects of the federal grants should be funded as soon as possible.

Q. How will the FJC be managed?

A. Community partners will play a major role in this, like they did before the FJC became a city department. That structure was set up in the original strategic planning process in 2002. We can revisit that plan, review progress, set goals for Phase II – the final home for the FJC. We can look at the governance structure again. Collaboration and cooperation is the very essence of the Family Justice Center model. We will be meeting together a great deal to figure out details to ensure a smooth transition. Yesterday, the Mayor presented his formal budget adjustment to the City Council which supports the YWCA short and long-term proposal. Next Wednesday is a key event. The Mayor's

support for the exciting future of the San Diego Family Justice Center.

Meeting Participant Comments: Exciting proposal, needed to be done, will bring everyone together. This will help make the Center successful. Thank you for answering our questions.

Prepared by  
Judi Adams

# Exhibit 13





THE CITY OF SAN DIEGO  
MAYOR JERRY SANDERS

M E M O R A N D U M

DATE: May 1, 2008

TO: Honorable Council President Peters and Members of the City Council

FROM: Jerry Sanders, Mayor

SUBJECT: Proposed Revision to the Recommended Fiscal Year 2009 Budget and the Recommended Transition of the Management of the City's Family Justice Center to the YWCA

---

For the past six months the City of San Diego has been in discussions with the YWCA to consolidate services provided by the Family Justice Center (FJC) and those provided by the YWCA, the District Attorney's Office and other community-based organizations. Recently, the YWCA submitted a formal proposal which management has validated and determined would be in the best interest of our citizens. The proposed change would provide for better coordination of services and a more regionalized approach for providing services to families in need.

The proposal is in two parts and is projected to save the City approximately \$326,000 per year for fiscal years 2009 and 2010 and to save over \$785,000 per year each year thereafter. This proposal comes after several discussions with representatives of the YWCA, community-based organizations at the Center, the District Attorney's Office and City staff.

The first part of the proposal calls for the YWCA to assume responsibility for the management of the FJC effective July 1, 2008. The YWCA would be paid a management fee of \$125,000 per year for the first two years and would assume all responsibility for the positions summarized as "personnel costs" in the Fiscal Year 2009 Budget. This would reduce the City's net labor costs by \$451,000, resulting in a net savings to the City of \$326,000. Because of lease obligations, the program would still be operated out of the FJC current location and the City would retain its obligation to pay for rent and other related operating expenses.


The second part of the proposal would take effect following the expiration of the City's current lease. The YWCA is about to undertake a major renovation of its property at 1012 C Street and is expected to complete this project by March 2010. As part of this renovation, the YWCA would provide adequate space for the FJC, along with the numerous community organizations that have partnered with the City to meet the needs of this population. The proposal calls for the City to pay rent in the amount of \$900,000 per year, inclusive of any management fee paid during the first two years. In exchange for this, the YWCA would assume all other operating expenses. Based upon the proposed 2009 budget of approximately \$1.685 million, the City would save \$785,000 per year. The proposed lease arrangement would be for a ten year period.

Family violence is an extremely complex issue which manifests itself in varying dynamics within families. We must recognize that violence that begins within the family unit often carries over beyond familial relationships in the form of youth violence, gang violence, school violence, and community violence. Therefore, a comprehensive, regionalized approach to preventing and intervening with family violence is essential. Violence that originates within families affects the entire community.

The vision of this proposal is to develop a comprehensive continuum of care for families across San Diego County including public safety services to be known as the San Diego County Family Justice Network. This continuum includes prevention of family violence, identification and screening, early intervention, intensive intervention and support services, re-entry for victims and offenders, as well as reunification/reintegration of families whenever appropriate. The foundation of this countywide system will be Regional Family Justice Centers. This network will be made up of four to five primary regional Family Justice Centers which reflect the continuum of care and facilitate the coordination of community and criminal/civil justice system intervention services for families experiencing domestic violence, child abuse, sexual assault and elder abuse.

At present there are two co-located service delivery Centers in San Diego County, the San Diego Family Justice Center and the North County Family Violence Prevention Center. A third center, the East County Family Justice Center is currently in the planning stage in El Cajon. Ultimately, the plan would be for a Regional Family Justice Center Network that focuses in four geographical areas for planning purposes in order to coordinate the development of regional plans which establish comprehensive, inter-related, interactive, coordinated community and criminal/civil justice system services in each area of the County. The regional vision for meeting the needs of families exposed to violence will become a national model and ensure the long-term success of our joint commitment to break the cycle of family violence in San Diego County.

The City's participation in this effort is critical for its success and I will ask for your support both as part of the budget process and ultimately when I bring forward a memorandum of understanding which will address the operations of the FJC for fiscal years 2009 and 2010 and ultimately a lease agreement for fiscal years 2011 through 2020.



JERRY SANDERS  
MAYOR

JG/r

cc: Jay M. Goldstone, Chief Operating Officer  
Andrea Tevlin, Independent Budget Analyst  
Jill Olen, Deputy Chief Operating Officer

# Exhibit 14

**SDFJC Partner Managers' Meeting Minutes**  
**April 9, 2008**

**ATTENDEES:**

Allison Sepulveda	San Diego Deaf Mental Health Services – <a href="mailto:info@sddmhs.org">info@sddmhs.org</a>
Amy Fitzpatrick	Executive Director, San Diego Volunteer Lawyers Program – 619-235-5656 – <a href="mailto:afitzpatrick@sdvlp.org">afitzpatrick@sdvlp.org</a>
Charles Wilson	Chadwick Center – Rady Children's Hospital – <a href="mailto:cwilson@rchsd.org">cwilson@rchsd.org</a>
Danielle Lingle	Center for Community Solutions – 858-272-5777 – <a href="mailto:dlingle@ccssd.org">dlingle@ccssd.org</a>
Jim Collins	Captain, San Diego Police Department, Investigations I, Domestic Violence Unit / Child Abuse / Sex Crimes – 619-531-2339 – <a href="mailto:jcollins@pd.sandiego.gov">jcollins@pd.sandiego.gov</a>
Mark Foreman	Director, San Diego Family Justice Center – 619-533-6010 – <a href="mailto:mforeman@sandiego.gov">mforeman@sandiego.gov</a>
Morris Touriel, PhD	Navy Family Advocacy Center – 619-556-8818 – <a href="mailto:morris.touriel@navy.mil">morris.touriel@navy.mil</a>
Shelley Webb	City Attorney's Office – DV Unit – 619-533-6050 – <a href="mailto:sawebb@sandiego.gov">sawebb@sandiego.gov</a>
Verna Griffin-Tabor	Center for Community Solutions – 858-272-5777 – <a href="mailto:vtabor@ccssd.org">vtabor@ccssd.org</a>

**DISCUSSIONS:**

- All agree that the group will continue to meet quarterly to discuss common issues affecting the partners operating in the SDFJC.
- Talked about current job openings in SDFJC.
- Reviewed and discussed YWCA proposal to City Mayor regarding co-locating SDFJC at the YWCA beginning in 2010 and interim proposal to allow the YWCA to manage the SDFJC as a non-profit partner in lieu of the City department, effective July 1, 2008. The proposal must pass through public hearing process before approval.
  - Navy Family Advocacy Center and Volunteer Lawyers Program expressed concern that neither had been consulted as the official representatives of their respective organizations by the YWCA staff prior to submitting the proposal to the City though the written leads the reader to believe that all partners concurred.
  - Chadwick Center expressed view that alternative models may be expensive and are not already on the table as viable options. Asked the key question about commitment from the City.
  - Regional models are more common nationwide.
  - CCS indicated that the bottom line savings for the City is important.
  - City Attorney needs to stay in downtown area for efficient court access. Have questions of City Attorney role since the proposal indicates that a large presence by City Attorney is not anticipated.
  - All of the non-profit partners indicated that if they need to pay rent, they could not afford to participate in SDFJC, regardless of location, and would need to relocate.
  - The group has concerns about where the existing shelter beds would be displaced to make room for the SDFJC. Does not want to see a reduction in shelter beds.
  - Partners recognize unknowns on the horizon, regardless if the proposal is accepted by the City or if alternatives are identified and selected.

**NEXT MEETING:** July 2008, TBD

# Exhibit 15



The Honorable Jerry Sanders  
Mayor, City of San Diego  
202 C Street  
San Diego, CA 92101

March 27, 2008

Dear Mayor Sanders,

On behalf of the Board of Directors of the YWCA of San Diego County, I am writing to offer two mutually beneficial proposals which will provide substantial savings to the City of San Diego and improved services to YWCA of San Diego County and San Diego Family Justice Center clients. These two proposals, if implemented by the City, will yield financial savings to the city of \$600,000 between 2008 and 2010 and savings of over \$500,000 per year after 2010. The proposals will also ensure the long-term sustainability of the nationally recognized San Diego Family Justice Center and produce a Family Justice Center regional governance approach that will be a model for the nation in the years to come.

**Proposal #1 – Savings to City of approximately \$500,000 per year**

The first proposal is to offer a permanent home for the San Diego Family Justice Center, within two years, at the historic Main Building of the YWCA of San Diego County located at 1012 C Street. With your support, the YWCA would provide a home to and leadership for the nationally recognized Center by contracting with the City of San Diego for a ten year lease arrangement of approximately \$900,000 for the first year with minimal inflation increases thereafter.

With the City of San Diego's acceptance of this proposal and the waiver of use restrictions on our property by the Centre City Development Corporation (CCDC) and the San Diego Housing Commission, the YWCA is prepared to engage in the planning and execution of a multi-million dollar renovation of our

---

YWCA of San Diego County, 1012 C Street, San Diego, CA 92101 (619) 239-0355

[www.ywcasandiego.org](http://www.ywcasandiego.org)

1012 C Street property in order to house the San Diego Family Justice Center by March 2010. Through a cooperative rent/management arrangement with the City of San Diego, we believe we can save the City of San Diego approximately \$500,000 per year compared to the current City operational costs for the Family Justice Center.

Since 1978, the YWCA of San Diego County has been providing, and is committed to continue providing, shelter and services to domestic violence victims and their children. The addition of the Family Justice Center to the YWCA programs will significantly enhance the safety and services to over 7,000 domestic violence victims per year in the City of San Diego. Such a merger is also consistent with the original vision for the Family Justice Center model which came from collaborative work at the YWCA as early as 1989.

Our financial team has completed a comprehensive business analysis and has concluded, in consultation with the community partner agencies of the San Diego Family Justice Center, that the renovation of our property is a perfect opportunity to move toward community-based leadership for the Family Justice Center and finalization of a plan to create a permanent home for the San Diego Family Justice Center. This is consistent with the Regional Family Justice Center Network Plan prepared in 2004 in conjunction with the San Diego Family Justice Center and the San Diego Domestic Violence Council and updated in 2007 by the District Attorney's Office and a host of community-based agencies planning the current East County Family Justice Center. The current regionalization plan is included as an attachment to this letter.

In preparing this proposal we not only received input from all the community partner agencies of the San Diego Family Justice Center, but have consulted with architects, contractors, CCDC, the San Diego Housing Commission, financing experts, possible tenants, and property owners on our block. We believe the renovation of our building is feasible within the time frame required to move the Family Justice Center to the YWCA Main Building by March 2010 if we can begin the process, with your support, toward this vision.

The Board of Directors of the YWCA has unanimously voted to support implementation of this proposal including the attendant capital campaign and related fundraising necessary to fund the renovation of the YWCA building. The plan does anticipate funding from CCDC's current Health and Human Services Capital Assistance Program (currently in process).

Obviously, time is of the essence. Your support for this proposal is the first step in accomplishing this significant goal and preventing future generations of family violence victims. The second step will be to ask CCDC and the San

---

YWCA of San Diego County, 1012 C Street, San Diego, CA 92101 (619) 239-0355  
[www.ywcasandiego.org](http://www.ywcasandiego.org)

Diego Housing Commission to waive the residential use restrictions on the building and re-locating our current housing programs to other locations. The final step will be City Council support for the amendment of the San Diego Municipal Code to eliminate the current City department charged with operating the Center and moving toward the community-based leadership model for all Family Justice Centers in San Diego envisioned in the Regional Family Justice Center Network Plan.

**Proposal #2 – Savings to City of approximately \$300,000 per year**

Our second proposal for your consideration in the current City budget cycle is for the City to immediately pursue a management agreement (effective July 1, 2008) with the YWCA to provide leadership for the San Diego Family Justice Center at the present location of the Center at 707 Broadway. Based on a \$125,000 management fee paid by the City to the YWCA of San Diego, the YWCA would oversee and coordinate the work of the Family Justice Center partner agencies.

Based on our financial team's assessment, the City could save approximately \$300,000 per year for the next two years by contracting with the YWCA to provide collaborative leadership to the San Diego Family Justice Center partner agencies. The YWCA clients would also benefit from this arrangement during the building renovation at 1012 C Street by receiving commonly provided FJC services at the existing location at 707 Broadway.

Through a cooperative management agreement between the YWCA and the City of San Diego, the YWCA of San Diego County proposes to provide on-site coordination for and leadership among the community agencies historically associated with day to day operation of the San Diego Family Justice Center. Using new and existing YWCA personnel, this model would immediately provide savings to the City of over \$300,000 per year and allow a two year transition process for the re-location of the Center to the YWCA Main Building by March 2010.

Both proposals included in this letter are consistent with the current Family Justice Center Regional Network Plan originally developed with participation from all the partner agencies of the San Diego Family Justice Center, the San Diego Domestic Violence Council, Supervisor Pam Slater-Price, Police Chief Bill Lansdowne, Sheriff Bill Kolender, and District Attorney Bonnie Dumanis.



There are two attachments to this letter which provide the background information related to this proposal from the YWCA of San Diego County.

- The Family Justice Center Regional Network Plan - 2007
- Draft Building Renovation Floor Plans for the FJC in 2010 (Phase I)

Family Justice Center Regional Network Plan - The FJC Regionalization Plan anticipates community-based agency leadership in 5-6 Family Justice Centers to be developed county-wide over the next five years under the regional leadership of the County District Attorney's Office.

Draft Building Renovation Floor Plans -- The draft building layout of the renovated YWCA Main Building was prepared by architect Kolaro Nakamura in consultation with community partner agencies of the San Diego Family Justice Center. It allocates over 32,000 rentable square feet space for the Family Justice Center and the San Diego Police Department's Domestic Violence and Elder Abuse Units. It does not anticipate a large presence from either the District Attorney or City Attorney's Office in Phase I. The YWCA is willing to work cooperatively with CCDC, the City, 11<sup>th</sup> and B Development Corporation, and the FJC community partner agencies to plan additional space for the San Diego Police Department, prosecutors, and other allied agencies of the Family Justice Center in Phase II of the redevelopment of the entire block bounded by B and C Streets and 10<sup>th</sup> and 11<sup>th</sup> Avenues over the next 3-5 years.

We have consulted with all community partner agencies of the Family Justice Center on this proposal and are prepared to work cooperatively with the Police Department and other potential partners to make this vision a reality by March 2010.

The YWCA Main Building offers a synergistic environment for children and families that would greatly enhance the Family Justice Center work and vision. The preliminary plans for the renovated building have an operating health and fitness center, a large training room/auditorium, an indoor and outdoor children's area, an operating pool and gym, a coffee shop, art and music activity areas, indoor and outdoor eating areas, a health clinic (including space for the Center's Forensic Medical Unit), and space for the community partner agencies of the Center, the San Diego Police Department, and space for prosecutors and support staff to work at the Center on an as-needed basis.

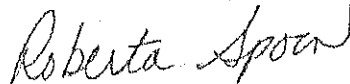
At your earliest convenience, we would like to meet with you or your staff designees to discuss our proposal and seek to develop a process for

consideration of this exciting opportunity for the YWCA, the San Diego Family Justice Center, and the allied agencies of the Center. We would also like to engage the City Council in this discussion as soon as possible.

We are honored to have the support of the Family Justice Center's VOICES Committee (former clients of the Center), District Attorney Bonnie Dumanis, San Diego City College, the Corporation for Supportive Housing, LISC, the San Diego Capital Collaborative Group, Family Health Centers of San Diego County, and current and former partner agencies of the San Diego Family Justice Center. Our current timeline anticipates a decision making process with the City by June 1, 2008 in order to implement this plan successfully between July 2008 and March 2010.

Thank you for your consideration and designation of City staff members to work with us on the details of this exciting opportunity for the YWCA, the community partner agencies of the Family Justice Center, the City of San Diego, and thousands of victims of domestic violence and their children in the City of San Diego.

Sincerely Yours,



Roberta Spoon, CPA  
President  
YWCA of San Diego County  
Board of Directors

cc: Hon. Scott Peters

Jay Goldstone

Kris Michell

Nadir Tirandazi





NORTH

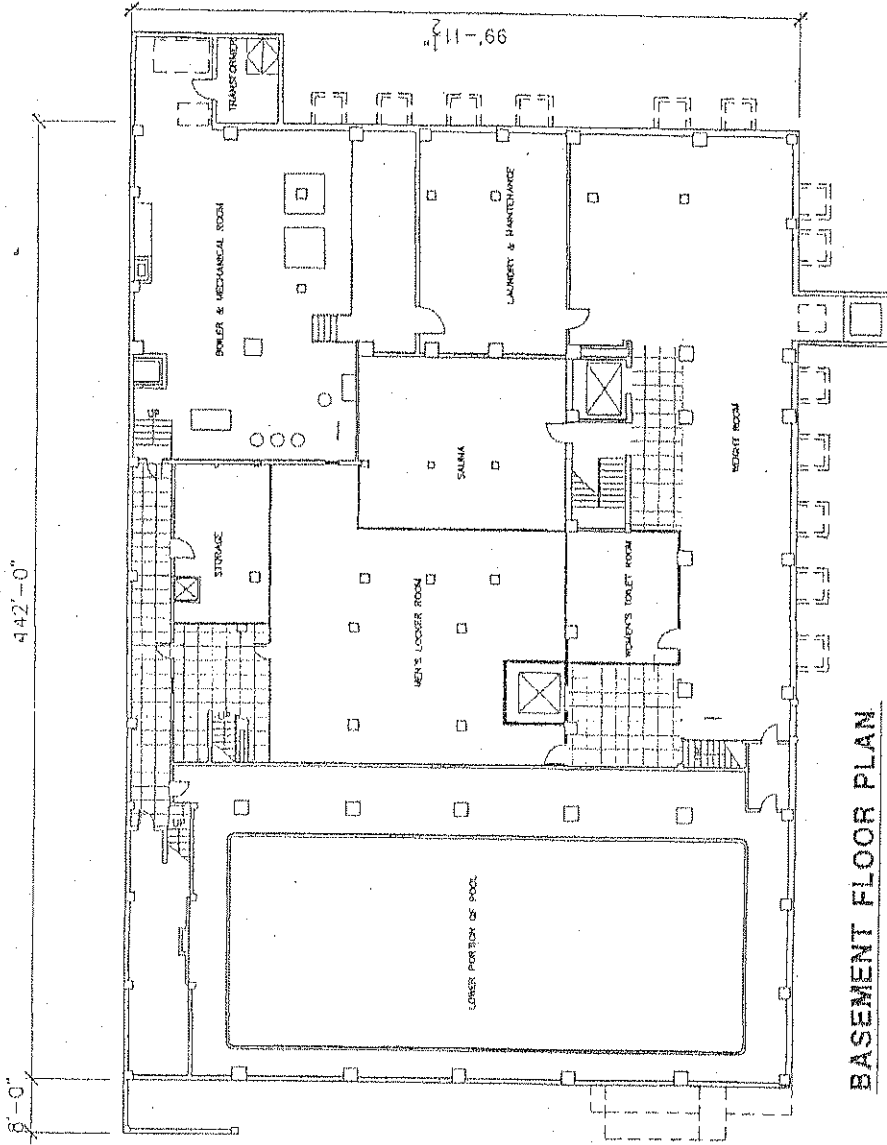
# LEGEND

— (E) WALL

— (N) WALL

ROSELING NAKAMURA LEAD  
ARCHITECTS INC.

343 Fifth Avenue  
New York, NY 10001  
212.233.1972  
212.233.0816  
www.roseling.com



BASEMENT FLOOR PLAN



## YWCA FEASIBILITY STUDY

MARCH 14th, 2008



NORTH

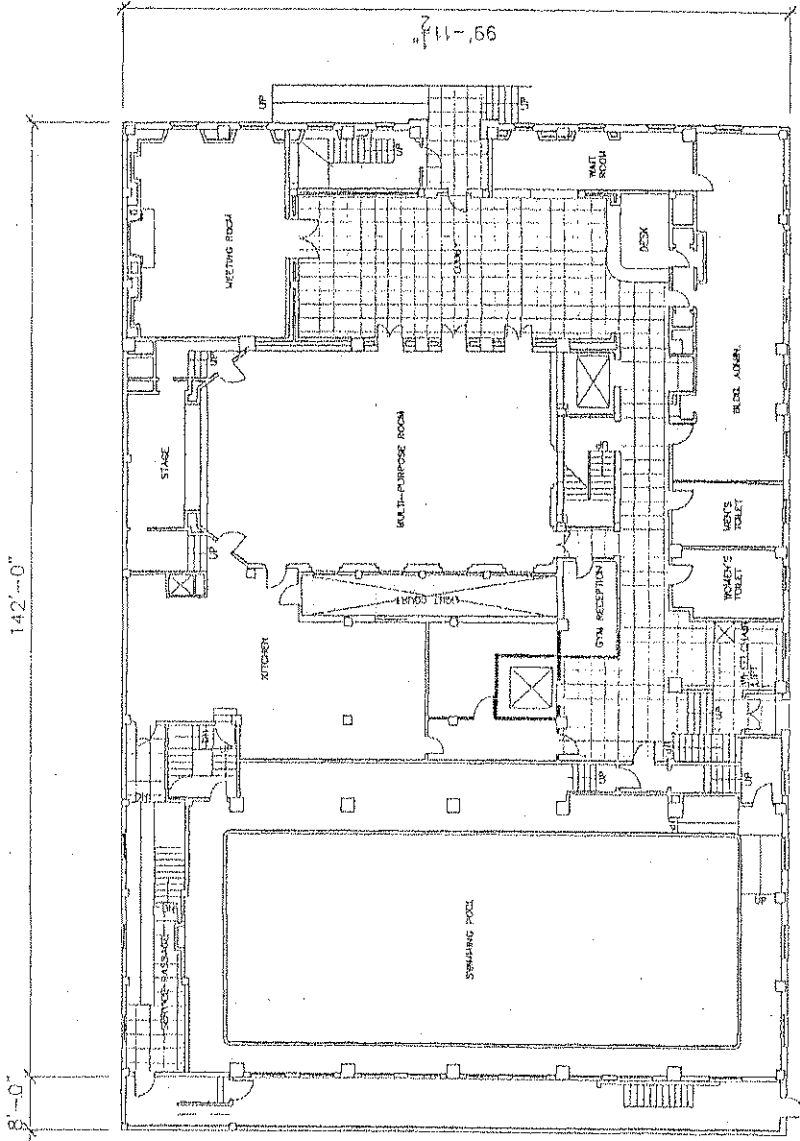
# LEGEND

— (E) WALL

— (N) WALL

ROSELING HANSEN/PAULSEN  
ARCHITECTS INC.

200 10th Avenue  
2nd Floor, Suite 200  
New York, NY 10011  
Tel: 212.252.0011  
Fax: 212.252.0012  
www.rhpa.com



## FIRST FLOOR PLAN

### YWCA FEASIBILITY STUDY

MARCH 14th, 2008

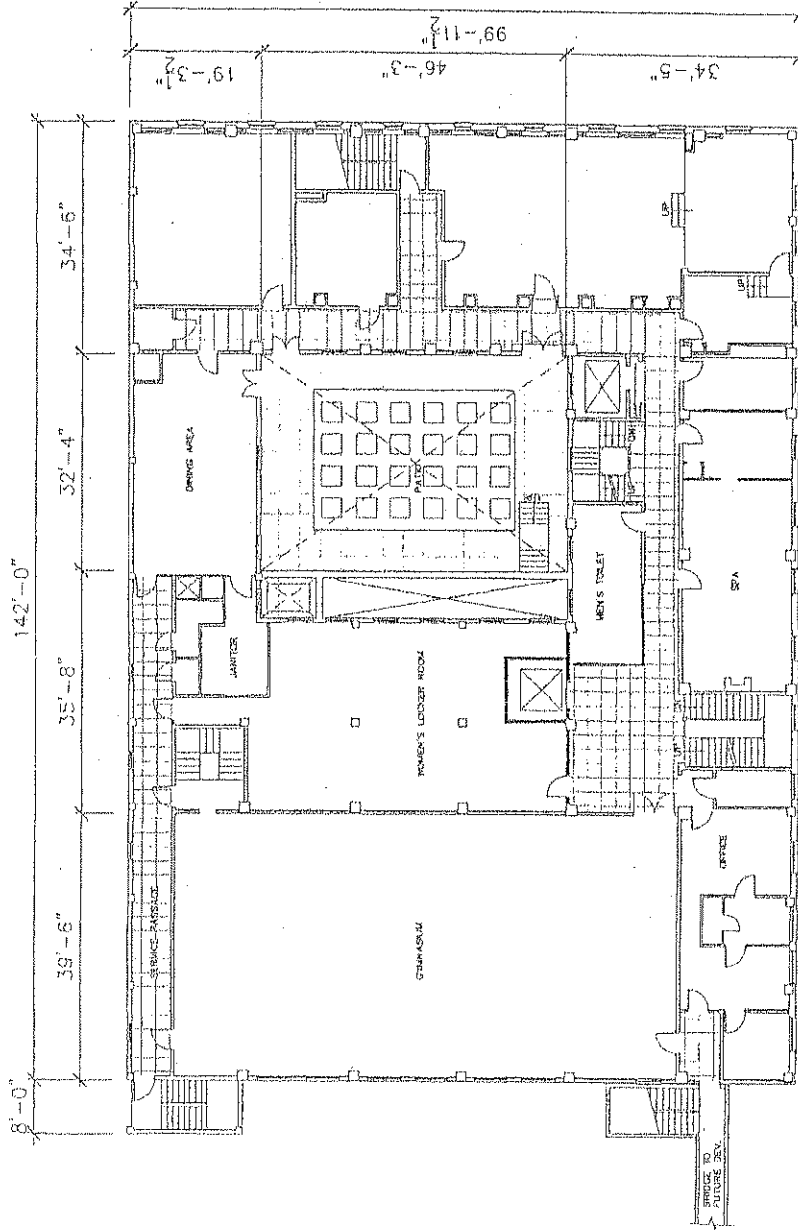


NORTH

LEGEND

— (E) WALL

— (N) WALL



SECOND FLOOR PLAN



HOEGLING HAYWARD TERRACE  
ARCHITECTS, INC.

240 E. 10th Avenue  
2nd Floor, Suite 200  
Portland, Oregon 97232  
503.223.1010  
www.hoeblinghayward.com

YWCA FEASIBILITY STUDY

MARCH 14th, 2008

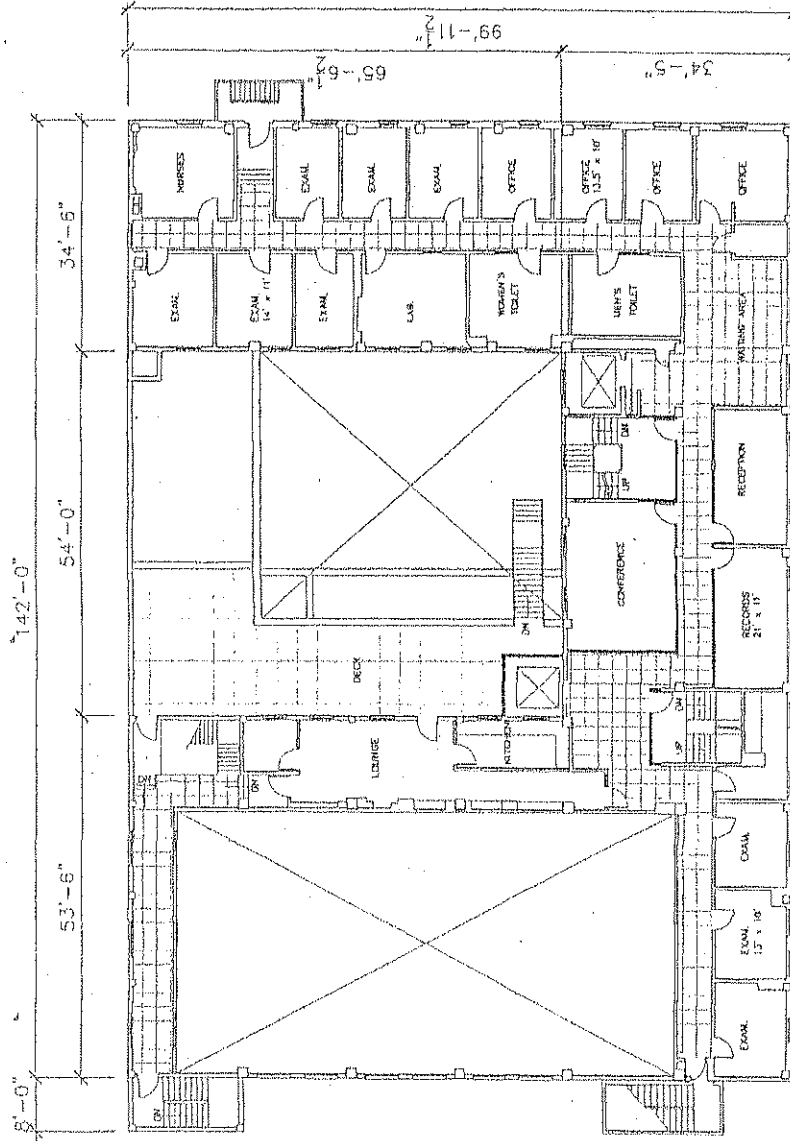


NORTH

# LEGEND

== (E) WALL

== (N) WALL



## THIRD FLOOR PLAN

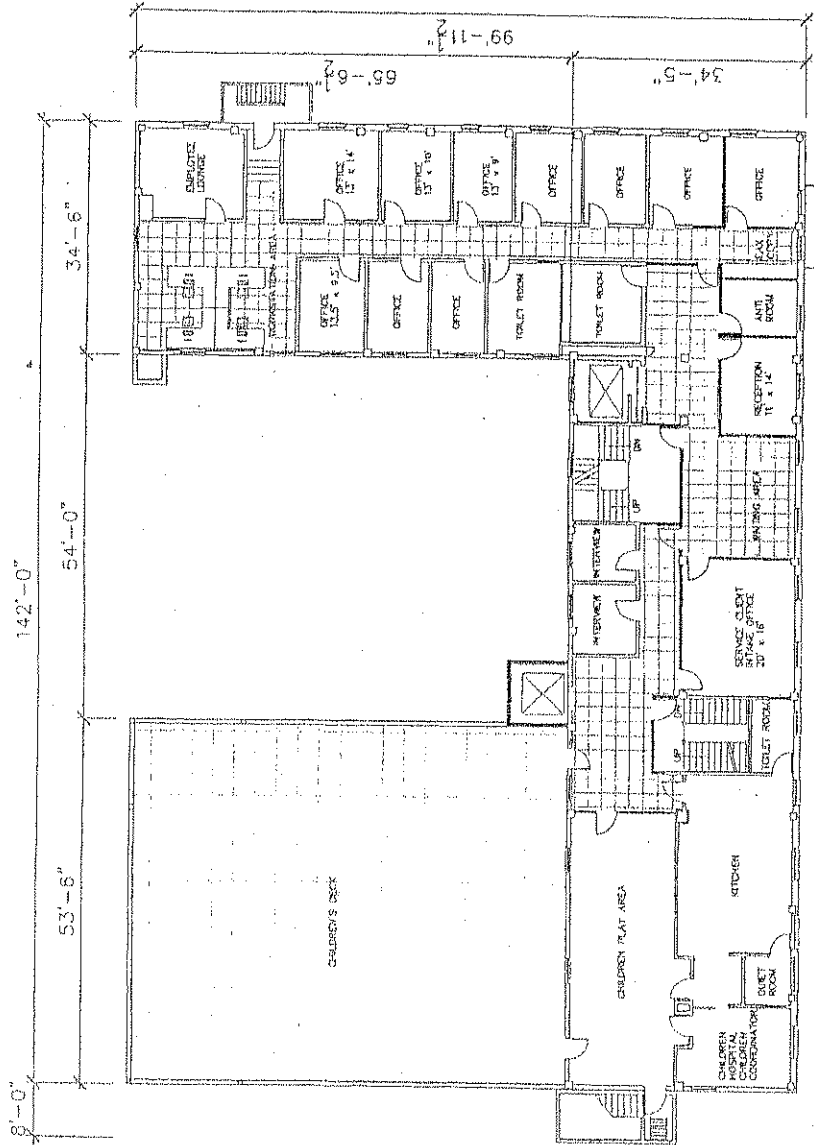


MOESLING WATKINS TERRAO  
ARCHITECTS INC.

323 Fifth Avenue  
New York, NY 10017  
Phone: 212-223-1923  
Fax: 212-223-9816  
www.moesling.com

## YWCA FEASIBILITY STUDY

MARCH 14th, 2008



FOURTH FLOOR PLAN



**YWCA FEASIBILITY STUDY**  
MARCH 14th, 2008

ROBERT G. MAXIMUM TRIMAD  
ARCHITECTS INC.

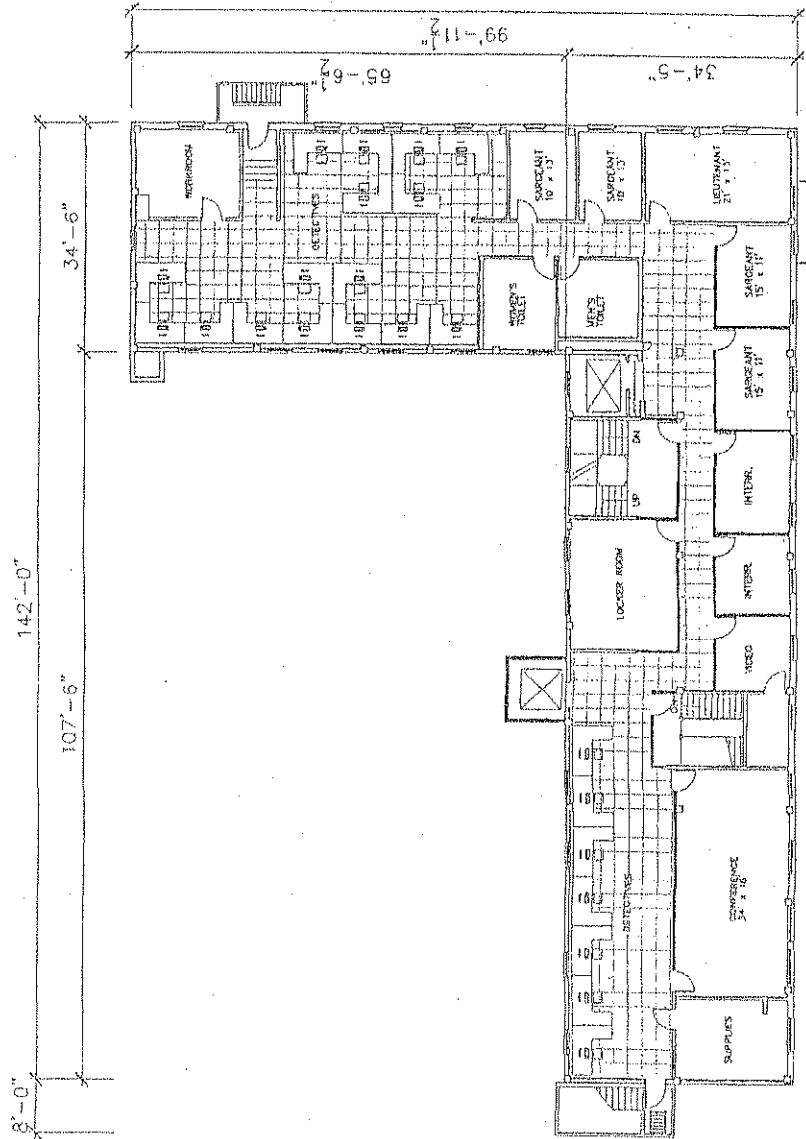
1. 公の御名  
 2. 公の御位  
 3. 公の御所  
 4. 公の御年  
 5. 公の御病  
 6. 公の御死

ENERGY

WALL

WALI  
(S)  
—





THE FLOOR PLAN

YVCA FEASIBILITY STUDY  
MARCH 14th, 2008

ROSLIND MAXIMUM ARCHITECTS INC.

1072-1086 A.D. (1072-1086) "The Great  
 1072-1086 A.D. (1072-1086) "The Great  
 1072-1086 A.D. (1072-1086) "The Great  
 1072-1086 A.D. (1072-1086) "The Great

# Exhibit 16

Webb, Shelley

From: BOUNCE\_1877\_17803\_14@renetmailatl.blackbaudhost.com on behalf of donations@ywcasandiego.org  
 Sent: Thursday, January 31, 2008 12:44 PM  
 To: Rippel, Gina  
 Subject: YWCA January E-News



## Thanks to Our 2008 Centennial Sponsors

### National University

Union Bank of California	Bank of America
San Diego National Bank	The San Diego Padres
RECON	The Westreich Foundation
Sempre Energy	San Diego Metropolitan Magazine
Clear Channel San Diego	San Diego Daily Transcript
Holland America Lines	San Diego Magazine

## Excitement Builds at the YWCA

As we begin our 100th year of operation at the YWCA of San Diego County, there is tremendous excitement in the air at our downtown building at 10th and C Street. Renovation, clean up, and redevelopment dreams are in the air! We have a development team beginning to meet, we are holding community partner meetings with a host of allied agencies, and we are talking to the District Attorney and the Mayor about the potential future use of our building to maximize our impact in the lives of domestic violence victims and their children. We also have a powerful team coming together to plan the redevelopment of the entire block which would hold affordable housing, mixed use retail and fitness facilities, spaces for music and art, community meeting places, a coffee shop, and perhaps even a new home for My Sister's Closet (the YWCA thrift store). Our building needs renovation, our pool is begging for water again, our gym is longing to be filled with children, families, and activities...and you can help.

### In this issue:

- [Thanks to Our 2008 Sponsors](#)
- [Message from Casey Gwinn](#)
- [Secure Your Spot as a Table Captain for In the Company of Women](#)
- [Holiday Events for Women, Families Plentiful at YWCA](#)
- [Women Who Dare](#)
- [Annual Report \(PDF\)](#)

get help.  
QUICK RESOURCES

give.  
WAYS TO DONATE

act.  
VOLUNTEER WITH US

Our architect and a local construction team are studying the building and determining the costs of renovation. We are looking for capital investment, major sponsorships, naming rights donors, and monthly pledge donors to help us pay for the planning, design, and pre-development costs. We are also asking for help with some very immediate needs: A hydraulic lift for an artist to start restoring the artwork on the ceiling of the auditorium; in-kind services from a contractor to remove the metal gate in our lobby and replace it with wood/glass doors; in-kind services to renovate our warming kitchen on the first floor to support a caterer for special events; new or almost new furniture to create a welcoming environment; outdoor furniture to allow our clients to use the patio; and an artist to paint and decorate the inside of our dreary elevator.

Our main building has stood the test of time and the souls of thousands of women who have worked at and received services in the building can be felt every day. But the time has come to update and upgrade the building to provide heating and air conditioning, to replace badly leaking plumbing, and very old wiring. It is time! Can you help? Do you know someone who can help? Please call me personally or e-mail me at [casey@ywcasandiego.org](mailto:casey@ywcasandiego.org) with questions or offers of support and involvement. We need you. Financial support for the upcoming capital campaign or your help in reaching out to major potential donors and sponsors will help us make our vision a reality.

Thank you in advance.

Casey Gwinn, J.D.



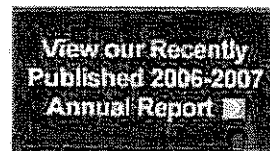
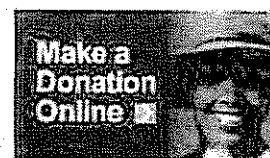
[Click here](#) to view our recently published 2006-2007 Annual Report.

## Secure Your Spot as a Table Captain for *In the Company of Women*

We are in need of additional table captains for our upcoming signature event, *In the Company of Women*.

Connie Chung will be the keynote speaker for the event. Ms. Chung was the first Asian-Pacific American anchor on national television. Her network television career has included assignments at NBC, CBS, ABC, CNN, and MSNBC. She received three Emmy Awards, including two for Best Interview/Interviewer. She is also the recipient of a George Foster Peabody Award, honors from American Women in Radio and Television and an Outstanding Young Woman of America Award.

The luncheon will be held on Tuesday, March 11, 2008 at the San Diego Convention Center. Carol LeBeau, anchor of 10News Live, is the Honorary Chair of the event.



[View an Online Version of this Newsletter](#)

To obtain additional information on becoming a table captain, or to sign up, contact Melanie Seales at 619-239-0355, Ext.218 or [melanie@ywcasandiego.org](mailto:melanie@ywcasandiego.org).

## Holiday Events for Women, Families Plentiful at YWCA

"This is the best Christmas I've had in a long time," said one client at the YWCA's holiday brunch. The brunch was served up by YWCA staff and community volunteers for women and children residing in the YWCA shelter and transitional facilities. To the background of soothing holiday jazz music, clients enjoyed eggs and cheese, Canadian bacon, sausage, pastries, hash browns, coffee and juice. In true YWCA spirit, leftovers were packaged and served to the homeless.

The YWCA holiday season was kicked off by a Thanksgiving breakfast, followed by a Christmas brunch, and topped off by a Kids Holiday Carnival and Christmas dinner. The Kids Holiday Carnival included face painting, a bounce house, arts and crafts, a magic show, food and beverages, and a photo op with Mr. St. Nick himself. On Christmas day, each family awoke to find bags of wrapped gifts from Santa at their door.

"Through the continued support and unselfish giving of so many individuals and businesses in the San Diego community, the YWCA was able to make this holiday season memorable for the women, children, and families we serve," said Debra Zanders-Willis, Chief Operating Officer of the YWCA.

A special thank you to David Chenelle and members of the Chefs de Cuisine Association for preparing and donating the delicious Thanksgiving breakfast and Christmas brunch.

## *Women Who Dare*

The Women's History Museum and the YWCA of San Diego County are proud to present the exhibit, *Women Who Dare*. The exhibit features women who changed the course of history through art and action. Featured in the exhibit are Anzia Yezeirska, author and spokesperson for Jewish immigrants, Shirley Chisholm, educator and United States Congresswoman, and Gabriela Mistral, Chilean poet, teacher, and journalist.

The Women's History Museum and Educational Center seek to educate and inspire present and future generations about the contributions and experiences of women by preserving, sharing and integrating their stories.

The exhibit will be on display in the lobby of the YWCA during the month of February. The YWCA is located at 1012 C Street.

[get help](#) :: [give](#) :: [act](#) :: [contact us](#) :: [job opportunities](#)

YWCA of San Diego County  
1012 C Street  
San Diego CA 92101  
619-239-0355

[Click here if you do not want to receive further emails.](#)

# Exhibit 17



THE CITY OF SAN DIEGO

Mayor Jerry Sanders

**PUBLIC NOTICE  
AND  
AGENDA**

San Diego Family Justice Center – A Public Safety Initiative  
2008 Quarterly Meeting: Steering Committee  
January 24, 2008 ~ 9:00 am – 11:00 am  
707 Broadway, Suite 700  
San Diego, CA 92101  
RSVP to [tbelengonzalez@sandiego.gov](mailto:tbelengonzalez@sandiego.gov)

Meeting Purpose: Given the FJC's future is interwoven with the City's future; what is our current status and how do we plan for 2008?

Welcome and Introductions

State of the FJC

- 2007 Staff Transition
- Renewed Mission and Vision
- Tactical Plan
- Active Programs
- Planned Relocation in 2010

Public Comment

Suggestions and Recommendation for the FJC in 2008



**Family Justice Center**

707 Broadway, Suite 700, MS 70 • San Diego, California 92101-5376  
Tel (619) 533-6020 Fax (619) 533-6049